

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33209
Docket No. MW-32431
99-3-95-3-328**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised a track foreman’s position within Bulletin No. 4 dated March 31, 1994 and instead of assigning the senior employe, Mr. C. Wicks, who submitted a bid for the position it assigned Mr. J. J. Wilson who did not request or submit a bid for said position (System File 1994-29/013-293-15).**
- (2) As a consequence of the above-stated violation:**
 - (a) Mr. C. Wicks shall be assigned to the track foreman’s position involved here with seniority and he shall be compensated for all wage loss suffered (the difference in pay he received and that he would have received had the Carrier properly awarded him the position) beginning April 12, 1994 and continuing until he is assigned to the track foreman’s position in question, and**
 - (b) Mr. J. J. Wilson’s name and foreman’s seniority shall be reinstated in its proper place within the appropriate seniority roster(s) as listed prior to the date of the incident in question.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Recent Third Division Award 32398 between the same parties involving the same issue is enlightening. In that case the Carrier also issued a bulletin for Track Foreman position, denied that position to the senior employee who bid on the position and forced assigned employee J. J. Wilson, who held Track Foreman Seniority but did not bid, into the Track Foreman Position. There, as here, the Carrier maintained that Rule 8 and the July 1, 1989 Memorandum of Agreement provided authority for such action.

The Board in that case stated:

“... that the Carrier’s position lacks merit. Neither the Agreement nor Memorandum contains clear language permitting force assignment under the conditions of this claim. The position was bulletined and could be filled by applicants first who held seniority in rank and then by lower ranks having appropriate ability and seniority. The Claimant’s rights were violated when the Carrier force assigned an employee who did not bid the position. The 1994 Seniority Roster indicates that Claimant was awarded Foreman Seniority on July 22, 1993 and the Board finds that the claim is payable until such date.”

The Board finds that Award 32398 disposes this matter, and that the remedy requested in the present claim should be granted.

Form 1
Page 3

Award No. 33209
Docket No. MW-32431
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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of April 1999.