

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**GRAND TRUNK WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That Senior B&B Foreman F. Douglass, instead of Junior B&B Foreman Robert Kerr, should have been assigned to the position of Foreman advertised on Bulletin No. 6, under date of August 7, 1946; and

(2) That B&B Foreman F. Douglass should be allowed the difference in pay between what he did receive and what he would have received had he been awarded position of Foreman advertised on Bulletin No. 6.

**JOINT STATEMENT OF FACTS:** Under date of August 7, 1946, a position of Foreman was advertised in the B&B Department on Bulletin No. 6. The following employees of the B&B Department, with seniority as indicated, placed a bid on this position:

	Promoted to Foreman
F. Douglass	January 16, 1916
R. Kerr	April 1, 1927
G. Frye	September 16, 1937
J. Heaton	August 16, 1943
J. Polifrone	May 8, 1928 (Machine Man in Shop. Not Foreman)

Under date of August 27, 1946, the position was awarded to Robert Kerr, effective September 3, 1946.

Agreement between the Grand Trunk Western Railroad and the Brotherhood of Maintenance of Way Employees is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Article III, Section (b) of the effective agreement provides as follows:

"New positions and permanent vacancies will be bulletined within ten (10) days previous to, or following the effective date of such new position or permanent vacancy, and filled by the senior qualified applicant, except that positions of highway and street crossing watchmen or gatemen which are not subject to the general rules of promotion, will only be so filled when there are no employees who have become unfit for other service to be placed; incapacitated Maintenance of Way Employees shall be accorded preference on such positions."

**OPINION OF BOARD:** On August 7, 1946, the Carrier bulletined the position of a permanent vacancy of a B&B Foreman, being the shop foreman at Durand, Michigan. Five men bid on the position, including the claimant and Robert Kerr. On August 27, 1946, the position was awarded to Robert Kerr effective as of September 3, 1946. Douglass had a seniority as foreman dating from January 16, 1916, whereas Kerr had such rating from April 1, 1927.

Article III, Section (b) of the effective agreement between the parties and here applicable provides in part as follows:

"\* \* \* permanent vacancies will be bulletined within ten (10) days \* \* \* and filled by the senior qualified applicant, \* \* \*."

There is no question of promotion involved in this case and, based on seniority, Douglass is entitled to the position provided he is qualified as in the aforesaid rule provided. Under this rule the determination of the applicant's qualifications is primarily the responsibility of the Carrier and it is only in those instances where it can be shown that the Carrier's actions were influenced by bias, prejudice or by an arbitrary and capricious purpose to circumvent the spirit and intention of the Agreement that a claim that the Agreement has been violated can be sustained. We cannot substitute our judgment for that of the Carrier in matters of this nature. Our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith and upon sufficient supporting evidence or whether it was the result of an abuse of its discretion.

The presumption of Douglass' qualifications that arise by reason of his many years of service as a foreman is not necessarily conclusive and it relates primarily to the types of operation of which he has been in charge. This fact is evidenced by the agreement of the parties wherein, under circumstances such as here, it leaves that question to the discretion of the Carrier subject, of course, to the condition that it must not abuse that right. Here we find the position for which Douglass bid much broader in its scope of operations than those covered by his previous work. It involved the supervision of classes of work for which he has had no previous experience.

The record in this case does not warrant any interference by this Board with the decision made by the Carrier.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the Agreement by the Carrier.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1947.