

Award No. 7035

Docket No. MW-6971

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

- (1) The Carrier violated the agreement when they failed and refused to assign Section Foreman C. E. Fick to the position of Foreman on Extra Gang No. 6 and in lieu thereof, assigned junior Foreman K. C. Michael;
- (2) Foreman C. E. Fick be allowed the difference between what he received at the section foreman's rate of pay and what he would have received as an extra gang foreman beginning with the date on which the disputed assignment was made (May 20, 1952) and continuing until the violation referred to in part (1) of this claim is corrected.

EMPLOYEES' STATEMENT OF FACTS: Under date of May 10, 1952, the Carrier issued Bulletin No. 365, advertising the position of Extra Gang Foreman for Extra Gang No. 6.

On May 16, 1952, Section Foreman C. E. Fick, who holds seniority as such from November 1, 1932, placed his application for the above referred to position as follows:

Mr. H. W. Johnson
Chief Engineer
Oelwein, Iowa

"Mason City
May 16, 1952

Your Bulletins No. 365 of May 10th, 1952.
No. 366—Mitchell

Please accept my bid as Foreman on Extra Gang No. 6 and No. 7.

20 years as Foreman. Experience as Foreman on Extra Gang year 1944.

/s/ C. E. Fick
Sec. No. 6"

employees are concerned, the only employees having system rights are (c)—Weed burning, weed mowing and Jordan spreader machine operators and (e)—Helpers to operators listed in paragraph (c). Seniority of employees in Group 1(a)—Section and Extra Gang Foremen—does not extend over the entire railroad, such employees have seniority on but one of the four operating divisions shown in Rule 5 as follows:

1. Minnesota Division—Main line, including South St. Paul terminal and W.M.&P. District.
2. Minnesota Division—M.C.F.D. District.
3. Illinois Division.
4. Iowa Division.

As shown in Carrier's Statement of Facts, Extra Gang No. 6 was established to perform a major project at Des Moines which is located on the Eastern Division (Iowa Division) listed as No. 4 above. K. C. Michaels, senior applicant on seniority roster of Section and Extra Gang Foremen—Eastern Division, was assigned to fill vacancy as Foreman of Extra Gang No. 6 and took charge of said gang at Des Moines.

Claimant C. E. Fick's seniority is confined to the Minnesota Division—M.C.F.D. District, listed as No. 2 above, and his name is shown on seniority list of Section Foremen on the Minnesota Division—M.C.F.D. District. Since he has no seniority rights to service on the Eastern Division (formerly Iowa Division) he obviously has no right to the service claimed.

Sole basis for claim is contained in General Chairman Wilson's letter of August 5, addressed to Carrier's Chief Engineer, reading in part as follows:

"Further there is no distinction in the effective agreement between a section foreman and an extra gang foreman, except the differential in pay in favor of the extra gang foreman. Rule (3) of the effective agreement provides that rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their length of service with the carrier. Foreman Fick was given no consideration in the instant case. Further, it is merely a case of two foremen with the same qualifications making application for a certain position and the Carrier failed to recognize the senior of the two when it assigned K. C. Michael to the position thereby bringing about a violation of the effective agreement."

K. C. Michaels in addition to being the senior applicant on the Eastern Division was well qualified to perform the duties of Foreman on Extra Gang No. 6 having had considerable experience in such work and there was no necessity for giving consideration to an employee on another and separate seniority district. Contrary to the Employees' contention, the governing rules **do not require the Carrier to appoint the senior applicant on the system to a position of Extra Gang Foreman**, since such positions are filled on an operating division basis instead of a system basis. The only exception under the agreement is found in Rule 6(d) which provides that promotions and assignments shall be based on ability and seniority; ability being sufficient in the judgment of the Management, seniority shall prevail. However, as previously stated, the senior applicant on the seniority district involved had sufficient ability to perform the service required and was assigned thereto.

Claim is without merit and should be denied.

OPINION OF BOARD: Under the provisions of Rule 5(a) seniority rights of Section Foremen extend over an operating division. Thus the claimant had no seniority right to a position on another division, particularly when a foreman on that division bid for the position.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 7035

Docket No. MW-6971

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees.

NAME OF CARRIER: Chicago Great Western Railway Company.

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Carrier asserts that a dispute has arisen involving an interpretation of our award. In this case the Carrier bulletined a position of Extra Gang Foreman to work on the Iowa Division and assigned to such position the senior applicant holding seniority as Section and Extra Gang Foreman on that division. The claim was that a Section Foreman with an earlier seniority date on another division had a superior right to the position by seniority under the agreement. We held that the agreement did not support the claim.

Subsequently and because of that award the Organization has asserted, and the Carrier has denied, that employees bidding on and accepting positions off their regularly assigned division would lose all seniority on their home division. The determination of that issue does not involve the interpretation of any provision of our award but rather an interpretation of agreement rules governing the loss or retention of seniority when employees are used to fill positions on other divisions.

Hence it appears that the issue presented by the application of the Carrier is not properly determinable by an interpretation of an award under Section 3, First (m) of the Railway Labor Act, as amended.

Referee Dudley E. Whiting, who sat with the Division as a member when Award No. 7035 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.