

Award No. 11587
Docket No. MW-10610

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective Agreement when the position of Steel Bridge Gang Foreman was awarded and assigned to Steel Bridgeman J. E. Wolfe whose seniority as a Steel Bridgeman is inferior to that of Steel Bridgeman J. B. Wills.

(2) Mr. J. B. Wills be allowed the difference between what he was paid at the Steel Bridgeman's rate and what he would have received at the Steel Bridge Gang Foreman's rate from September 4, 1957 until his seniority is recognized by his assignment to permanent position of Steel Bridge Gang Foreman.

(3) Mr. J. B. Wills be given seniority as a Steel Bridge Gang Foreman as of September 4, 1957, with seniority in such rank to be superior to that of Mr. J. E. Wolfe.

EMPLOYEES' STATEMENT OF FACTS: As of August 23, 1957 Messrs. H. C. Witt, J. B. Wills and J. E. Wolfe were all employed as Steel Bridgemen with seniority as follows:

H. C. Witt	7-7-25
J. B. Wills	1-20-1937
J. E. Wolfe	4-30-1941

Following the retirement of Steel Bridge Foreman E. F. Turner, Circular No. 144, dated August 23, 1957, was issued advertising a permanent vacancy in the position of Steel Bridge Foreman and inviting bids for said position. All three of the above-mentioned Steel Bridgemen submitted bids for said position and, under date of September 4, 1957, Circular No. 154 was issued, advising all concerned that said position had been awarded and as-

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are undisputed.

The issue is whether Claimant, a Steel Bridgeman, had a vested contractual seniority right entitling him to promotion to a bulletined vacancy in the position of Steel Bridge Foreman.

The Facts

The Carrier, on its system, had one Steel Bridge Foreman position. The holder of the position retired. The position was bulletined. Among the bidders were Claimant and one J. E. Wolfe, both Steel Bridgemen, with seniority dates of January 20, 1937 and April 30, 1941, respectively. The position was assigned to Wolfe.

Contentions of the Parties

Petitioner contends that Claimant, having more seniority than Wolfe, and being possessed of the ability, should have been assigned to the position; and, that Carrier's failure to do so was in violation of the seniority provisions of the Agreement.

Carrier contends that since neither Claimant or Wolfe had seniority in the classification of B&B Department Foremen the Agreement did not compel it to assign the position on the basis of seniority.

Pertinent Provisions of the Agreement

ARTICLE 3. SENIORITY.

"Rule 1 .

Seniority begins at time employee's pay starts in the respective branch or class of service in which employed, transferred or promoted and when regularly assigned. Employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules.

"Rule 2.

Seniority rights of employes of higher rank than laborers to new positions or vacancies, will be restricted to one Superintendent's district, except that seniority rights of employes in system gangs will extend over the entire system and be confined to their respective classifications. . . ." (Emphasis ours.)

* * * * *

"Rule 20.

Seniority for Bridge and Building Department employes shall be separated into four (4) groups as follows:

"GROUP 1

B&B Department Foremen

"GROUP 2

B&B Department Lead Mechanics

"GROUP 3

B&B Department Mechanics

"GROUP 4

B&B Department Helpers"

Resolution of the Issue

It is axiomatic that seniority rights, if any, are prescribed in and derive from the collective bargaining agreement.

In the Agreement before us we note that in Article 3, Rule 1, it is stated that "Employes are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules." (Emphasis ours.) Immediately following, in the first sentence of Rule 2 of Article 3 which is quoted *supra*, we find a circumscription which confines system gang employes seniority rights as to new positions or vacancies to seniority in "their respective classifications." Then in Rule 20 of the same Article, *supra*, it is provided that "Seniority for Bridge and Building Department employes shall be separated into four (4) groups. . . ." Separately listed as one group is "B&B Department Foremen." Reading the Rules together we conclude that no employe holding seniority in one of the other three groups has any contractual priority because of such seniority, to be assigned to a permanent position of Steel Bridge Foremen. Therefore, since Claimant, admittedly, had no seniority in the "B&B Department Foremen" classification, we will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1963.