

Award No. 12770
Docket No. MW-12425

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LEHIGH AND NEW ENGLAND RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on February 16, 1960, it assigned junior applicant Earl J. Kromer to the position of Extra Gang Foreman instead of senior applicant Michael Zupko.

(2) Claimant Michael Zupko be assigned to the aforesaid Extra Gang Foreman's position and that he be reimbursed for the difference between what he received at the Track Laborer's rate and what he should have received at the Extra Gang Foreman's rate since February 16, 1960.

EMPLOYEES' STATEMENT OF FACTS: Claimant Michael Zupko and Mr. Earl J. Komer have established and hold seniority on the Assistant Extra Gang Foremen and/or Assistant Section Foremen's seniority roster as of June 1, 1943 and December 16, 1943, respectively.

In addition, the claimant made application for and was assigned to the position of Section Foreman, Section No. 3, on November 25, 1959, thereby establishing seniority on the Extra Gang Foremen and/or Section Foremen's seniority roster as of that date.

Under date of February 1, 1960, the Carrier issued Bulletin No. 143, advertising the position of Extra Gang Foreman, with headquarters at Pen Argyl, Pennsylvania, in accordance with that portion of Rule 4 (a) which reads:

"New positions, permanent and temporary vacant positions will be bulletined any time within ten (10) days after they are created or occur for a period of ten (10) days during which the employees may file their applications with the Engineer Maintenance of Way. Bulletins will show advertisement number, position, present location, normal hours of service, starting time and rate of pay, and will be

In the absence of any such action within ten (10) days from the date the position was awarded to Earl Kromer, there was certainly no violation of this Rule on the part of the Carrier.

The Carrier contends that none of the rules of the current Agreement were violated as charged by the Organization in part (1) of their Statement of Claim to your Honorable Board when on February 16, 1960, it awarded the position of Extra Gang Foreman at Pen Argyl, Pa., to Earl Kromer, the only employe on the Extra Gang Foremen's and/or Section Foremen's Roster, who bid for the vacancy.

The Carrier, therefore, respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization alleges that the Carrier failed to award a bulletined position to the senior applicant, when on February 16, 1960, it awarded the position of Extra Gang Foreman to an employe other than the Claimant. The position was bulletined on February 1, 1960 and both the Claimant and the employe, who was eventually awarded the position, applied. The Carrier contends that the Claimant held no seniority covering Extra Gang Foreman and/or Section Foremen, whereas the employe to whom the position was given, did hold such seniority dating from January 11, 1960. The Organization maintains that the Claimant acquired seniority by virtue of having been assigned to the advertised position of Section Foremen on November 29, 1959. Carrier however states that although the Claimant was assigned to this position on the date indicated, he was removed and disqualified from this position after 29 days. This disqualification was the subject of another claim filed by this same Claimant in Docket Number MW-12357, Award 12529. The Board in that case found that the Carrier had not violated any of the rules of the agreement and denied the claim. Inasmuch as his disqualification from the position of Section Foremen was found to be in accord with the agreement, we have no alternative other than to agree with the Carrier that insofar as the Extra Gang Foremen's position was concerned, Claimant had no seniority rights. Hence we must 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.