

**Award No. 13275**

**Docket No. MW-11882**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Francis M. Reagan, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE ATLANTIC AND DANVILLE RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to consider an application received from Mr. D. M. Poythress for the position of Section Foreman on Section No. AD-35 headquartered at Capron, Virginia as advertised in Bulletin No. 9, dated November 14, 1958, and further violated the Agreement when it assigned the position to Mr. C. L. Griffin, a junior foreman.

(2) Mr. D. M. Poythress now be allowed the difference between what he received at the machine helpers' rate and what he should have received at the foreman's rate for eight hours each day on November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 1958, and at the foreman's rate for eight hours each day on December 22, 23, 24, 25, 26, 29, 30, 31, 1958 and January 1 and 2, 1959, account of violation referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** About 1949, the Southern Railway Company made application to the Interstate Commerce Commission for certificate of authority to abandon operations on that portion of the Norfolk Division between Danville and Norfolk, known as the Atlantic and Danville Railway. In connection therewith, the parties consummated a Memorandum of Understanding reading:

"WHEREAS, Southern Railway Company has made application to the Interstate Commerce Commission for certificate of authority to abandon operation of that portion known as the Atlantic and Danville Railway; and

WHEREAS, it is contemplated the Atlantic and Danville Railway operate as an independent company if such certificate of authority is granted; and

WHEREAS, it is desired that an understanding consistent with current agreements covering hours of service and working conditions

- "D"      Reply from Chief Engineer Moore, Southern Railway Company
- "E"      Assignment of position of Section Foreman
- "F"      Asst. General Manager Flowers' letter to Gen. Chairman Danner
- "G"      General Chairman Danner's letter to Roadmaster Duncan making claim
- "H"      Letter from Roadmaster Duncan to General Chairman Danner declining claim
- "I"      Letter from Roadmaster Duncan to Asst. Gen. Mgr. Flowers re-claim
- "J"      Letter from Chief Engineer Moore to General Chairman Danner
- "K"      Letter from Gen. Chairman Danner to Asst. Gen. Mgr. Flowers, appealing claim
- "L"      Letter from Asst. Gen. Mgr. Flowers to Gen. Chairman Danner declining claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It is noted in paragraph (1) of the Statement of Claim that the position of Section Foreman on Section No. AD-35 was advertised in Bulletin No. 9, dated November 14, 1958. Elsewhere in the record Bulletin No. 9 is referred to as dated October 14, 1958. (Emphasis ours.) This obvious conflict has been considered by the Board.

Claimant herein enjoys common seniority on the Southern Railway Company and the defendant Carrier, The Atlantic and Danville Railway Company.

Contention is made that Carrier violated the Agreement when it failed and refused to award Claimant, D. M. Poythress the position of Section Foreman on Section No. AD-35.

Carrier defended its action by citing that the Southern Railway Company had disqualified Claimant unbeknownst to him as an Assistant Foreman of a lining track gang.

The record shows that subsequent to this the Southern Railway Company used him as an Assistant Foreman and as a Foreman. Further, there are definite statements by superiors in the record of Claimant's full qualification to serve as an Assistant Foreman and Foreman. No evidence appears in the record of the materiality of Claimant being disqualified as an Assistant Foreman of a track lining gang as touching his qualifications for the requested 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 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 has been violated.

AWARD

Claim allowed. Recovery shall be limited to dates set forth in the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.