

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Don Hamilton, Referee

## PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
EIGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on or about April 8, 9, 10 and 11, 1963, it used junior machine operators to operate roadway machines instead of using senior Machine Operator A. Cornejo.

(2) The Carrier further violated the Agreement when it failed and refused to recognize A. Cornejo's seniority as a Machine Operator when it awarded, by Bulletin 3173-A, the positions of Roadway Machine Operator advertised by Bulletin 3173.

(3) Machine Operator A. Cornejo be reimbursed for all wage loss suffered because of the violations referred to in Parts (1) and (2) of this claim (System Case No. TJ-1-63 — UM-1-63.)

**EMPLOYEES' STATEMENT OF FACTS:** The claimant had established and held seniority in the Track Sub-department as a Roadway Machine Operator (Group 2) from May 31, 1957 and also as a Section Laborer (Group 1).

On or about April 8, 9, 10 and 11, 1963, the Carrier re-required operators for certain of its roadway machines. Instead of notifying and using the claimant to operate one of the machines, the Carrier notified and used junior Roadway Machine Operators J. Bejar and E. Calderon.

Moreover, the Carrier issued Bulletin No. 3173 advertising nine positions of Roadway Machine Operators. The claimant submitted an application for each of the positions, designating the order of his preference. The Carrier subsequently issued Bulletin No. 3173-A assigning one of the advertised positions to the claimant and the other eight positions to track laborers, none of whom held any seniority as a Roadway Machine Operator. However, the Carrier failed and refused to recognize the claimant's seniority as a Roadway Machine Operator when it failed to assign him to the position of his preference in accordance therewith.

The Agreement in effect between the two parties to this dispute dated August 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

respective sub-department desiring it before employing new men. Employees so assigned will retain their seniority rights in their respective groups from which taken."

"RULE 8.

Promotion shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail, management to be the judge of ability and merit, subject to appeal."

"RULE 12.

(g) An employee bidding for and who is awarded a position in a lower rank will forfeit his seniority in all ranks higher than the one in which he takes service."

"RULE 12.

(i) An employee promoted from a lower to a higher rank will rank above an employee declining promotion. An employee accepting promotion will have priority in consideration for further promotion."

"RULE 13.

(a) When forces are reduced, the senior employees in each respective gang and/or group will be retained and those affected either by being laid off or displaced will have the right to displace employees with less seniority in the same or in any lower rank in the seniority group in which employed. When an employee has seniority rights in more than one group, he may when affected by a force reduction exercise his seniority rights to enable him to hold the highest pay-rated position to which his seniority rights entitle him."

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant Cornejo acquired a seniority date as track foreman in August of 1961 and as a roadway machine operator on May 31, 1957. Both ranks appear to be higher than the rank of section laborer.

Cornejo was working as a track laborer in December of 1962 when Carrier advertised for the position of track foreman. Cornejo did not bid on the position.

The Carrier decided that the Claimant had forfeited his track sub-department seniority in all ranks higher than the one in which he elected to remain. If Carrier's contention is correct, then the claim should be denied. However, if the Carrier is in error, then the Claimant would have been senior to the employees who obtained the positions in the instant claim.

Rule 13 (f) states as follows:

"An employee having exercised his displacement rights in a lower rank because of exhaustion of such rights in former or higher ranks in which he holds seniority, shall continue to retain and accumulate seniority in such higher rank or ranks, but must avail himself of every

opportunity to return to a position in such higher rank or ranks by making application for every such position which is bulletined. Any such employee, including one temporarily filling a higher ranking position other than by application for and assignment to such position upon its being advertised, who fails to comply with the above, shall forfeit all seniority rights in any rank above the one in which he last exercised his displacement rights."

We are of the opinion that this rule is clear and concise and that it is to be interpreted as the Carrier indicated in the handling of this claim on the property. When Cornejo failed to exercise his seniority in any of the higher ranks, he forfeited his right to subsequently exercise seniority in any of the ranks above the one in which he first elected to remain.

The decision of the Carrier in the application of this rule is sustained and the claim will be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.