



Award No. 15972
Docket No. MW-15917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned the position of roadway machine operator as advertised by Gary Division Bulletin No. 3405 to M. Csernak (who did not make application therefor) instead of to the senior applicant, Mr. C. Montesinos.

[System Case No. TG-20-64 — VM-19-64]

(2) C. Montesinos be compensated for all wage loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant had established and held seniority as a section (track) laborer within the Track Sub-Department as of April 3, 1956.

Under date of August 4, 1964, the Carrier issued Bulletin No. 3405 advertising a temporary position of roadway machine operator on the Gary Division. Proper and timely applications for the aforesaid position were received from three (3) Group 1 Track Sub-Department employees (track laborers), including the claimant.

Despite the fact that the claimant held greater seniority than the other applicants and despite the fact that he had considerable experience in the operation of the Carrier's various roadway machines, the Carrier failed and refused to assign him to the subject position. Instead, it assigned said position to junior Track Laborer M. Csernak (seniority date July 1, 1957), who had not even submitted an application therefor, by Bulletin No. 3405-A, which reads:

"ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Maintenance of Way Department

BULLETIN

To Be Posted At All Bulletin Boards

Joliet, Illinois
August 24, 1964

iority in the higher rank. Seniority in the higher rank shall not be forfeited by an employe if another employe senior to him is assigned to any such position which may have been bulletined. If, however, the employe fails to make application for a bulletined position in such higher rank or ranks which, as a result thereof, is assigned by bulletin to a junior employe, said employe shall forfeit his seniority in such higher rank or ranks, except where such position is assigned to a junior employe because said senior employe was the senior applicant for another position of such higher rank or ranks which was then open for bid."

"TEMPORARY SERVICE

RULE 16. The management shall have the right to assign employes to temporary or special service and employes so assigned shall retain and accumulate seniority, and when released from temporary or special service shall return to former position. In the event such former position has been abolished, the employe will then exercise his seniority under the provisions of Rule 13. Position of employe so assigned to temporary or special service shall be bulletined as a temporary vacancy. Positions in extra gangs above the rank of laborer will be considered temporary but must be bulletined in accordance with Rule 12."

(Exhibits not reproduced.)

OPINION OF BOARD: On August 4, 1964, Carrier posted Bulletin No. 3405 advertising position of Roadway Machine Operator (Temporary). Bids were received from two employes plus Claimant. Claimant was denied the position as "not qualified." Carrier assigned the position to a junior Track Laborer who had not bid for the position.

Carrier's Division Engineer declined the Organization's claim on behalf of Claimant. He stated that in the instant case, Mr. Montesinos had obtained a score of zero when given the "Wonderlic Mental Ability Test," therefore, based upon his failure to record any score, it was determined that he did not have sufficient ability to be considered for promotion to the position of machine operator.

This dispute is identical in principle with cases covered by our Awards 15002 and 15586 involving the same parties, rules and in substance the same issues. Our findings in those awards are dispositive of the issues in the instant dispute and we do not consider those awards so completely in error to warrant a reversal.

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 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1967.