

Award No. 16107

Docket No. MW-16207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

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 failed and refused to assign the position of motor car repairman as advertised by Gary Division Bulletin No. 3408 to Crossing Watchman J. D. Greer, who was the only applicant for said position. (System Case No. SG-12064 - WM-13-64.)

(2) Crossing Watchman J. D. Greer be allowed the difference between what he was paid at the crossing watchman's rate and what he would have received at the motor repairman's rate had he properly been awarded the position referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant entered the Carrier's service as a track laborer within the Track Sub-Department in February, 1957. In addition to his seniority as a track laborer, the claimant has established and holds seniority as a highway crossing watchman in said sub-department as of February, 1959, thereafter being regularly assigned as such.

The Carrier issued Gary Division Bulletin No. 3408 advertising a position of motor car repairman, which read:

"No. 3408

Joliet, Illinois
August 11, 1964

(Scales & Work Equip. Subdept., Gary Divn.
(Group 2, Track Subdept., Gary Divn.
(B&B Subdept., Gary Divn.
(All Others, Track Subdept., Gary Divn.

To: All Employees

pany), in the Scales and Work Equipment sub-department will be filled first by employees holding seniority in the group and rank in which the vacancy or new position occurs. If not so filled, they will be filled by qualified employees in succeeding lower ranks in that sub-department. In the event the vacancies or new positions are not so filled by employees in the Scales and Work Equipment sub-department, they will be filled by qualified employees from Group 2 Track sub-department desiring same or qualified employees desiring same from the Bridge and Building Sub-Department and the Track Sub-Department in that order before hiring a new employee. Employees so assigned will retain their seniority rights in the respective other groups and sub-departments from which taken.

* * * * *

"MAKING PROMOTIONS

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."

"FAILURE TO QUALIFY

Rule 10. Employees awarded bulletined positions will be allowed sixty (60) calendar days in which to qualify for such position and failing to do so will be so notified within seven (7) calendar days of the expiration of the sixty (60) day qualifying period at which time they will have the right to return to their former positions without loss of seniority.

* * * * *

(Emphasis ours.)

(Exhibits not reproduced.)

OPINION OF BOARD: On August 11, 1964, Carrier posted Bulletin No. 3408, advertising position of Motor Car Repairman. Claimant, a crossing watchman, was the only bidder. Claimant was denied the position as "not qualified." Carrier re-bulletined the position and made assignment of the position to an employee junior to claimant.

Carrier's Supervisor Scales and Work Equipment declined the Organization's claim on behalf of claimant, asserting that in the instant case Mr. Greer 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 Motor Car Repairman.

This dispute is identical in principle with cases covered by our Awards 15002 (Zumas), 15586 (House) and 15972 (Mesigh), involving the same par-

ties, rules, and, in substance, the same issue. Our findings in those awards are dispositive of the issues in the instant dispute, and following the principle of Stare Decisis, we sustain the claim here.

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 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 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 1st day of March 1968.