

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22589  
Docket Number MW-22712

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Elgin, Joliet & Eastern Railway Company

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

(1) The Agreement was violated when the position of Water Service Mechanic as advertised in Bulletin No. 6418 was awarded to an applicant junior to Painter J. Budzevski (System File No. TM-2-77/SC-5-77).

(2) Bulletin No. 6418-A was further in violation of the Agreement because the applicants were not listed thereon in seniority order.

- (3) a. Bulletin No. 6418-A be cancelled and rescinded;
- b. The position of Water Service Mechanic be awarded to Mr. J. Budzevski;
- c. Claimant Budzevski shall be allowed the difference between what he earned as a painter and what he should have earned as a water service mechanic if he had been awarded the water service mechanic's position, beginning with the date of Mr. Krumrie's initial assignment thereto and to continue until the violation is terminated."

OPINION OF BOARD: This dispute centers on the Carrier's awarding a Water Service Mechanic's position to junior employee Carpenter E. Krumrie rather than Claimant. Carrier says it took this action based upon the harmonious application of Rule 32 (a) and Rule 27 (b) of the current agreement, which provide in relevant part as follows:

"32 (a)...if not so filled, they will be filled by qualified employees in succeeding lower ranks in that seniority group in accordance with Rule 27 (Making Promotions). In the event that vacancy or new position is not so filled by employees in the seniority group in which it occurs, then it will be filled by qualified employees from other seniority

"groups in the 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 27 (b):

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

Carrier says that in applying these rules together, it was obligated to give Mr. Krumrie first consideration for the assignment since he had advanced himself to higher ranked positions during his career, such as Garage Serviceman and Motor Car Repairman, albeit true that they were in a sub-department other than the sub-department in which the Water Service Mechanic's vacancy occurred.

The union, on the otherhand, says that this action was erroneous because Rule 32 is clear and unambiguous - such vacancies will be filled "...by qualified employees in succeeding lower ranks in that seniority group in accordance with Rule 27 (Making Promotions)." In this light, since Claimant held seniority and was working in the Water Service Group when he made application for this job (albeit on a lower ranked, Water Service Mechanic Helper job), he should have been given priority for the assignment under Rule 32 (a).

Similar issues have been before the Board in two previous cases, Third Division Awards 14320 and 20533, both involving these same parties. The parties here have negotiated unusual seniority and assignment rules which are not comparable, generally, to others in the rail industry. Granted, the position of the employees seems to have merit in equity and logic - but so does the interpretation of the Agreement rules advanced by the Carrier - which it says have been applied in this manner for as long as they have been in effect. While the facts in Award 14320 and 20533 may have been dissimilar, we are unable to conclude, from our review of this case, that the principles established by these decisions in interpreting the rules of the agreement here in dispute are incorrect. It appears this dispute sporadically arises between the parties, and we suggest that if the parties are unhappy with the current application of such rules, they sit down and negotiate changes which would be more acceptable. This Board is without such power.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.