

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22987
Docket Number MW-22921

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
((Southern Region)

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

(1) The Carrier violated the Agreement when it failed to assign Mr. C. H. Keister, Jr. to the position of carpenter as advertised by Bulletin No. HX-44 dated October 11, 1977 but assigned J. E. Arbaugh thereto (System File C-TC-543/MG-2124).

(2) Because of the aforesaid violation, C. H. Keister, Jr. be allowed eight (8) hours of pay for each day J. E. Arbaugh occupies the carpenter's position referred to in Part (1) hereof, beginning sixty (60) days retroactive from January 23, 1978."

OPINION OF BOARD: Both Claimant Keister and the other employee involved in this dispute, Mr. J. E. Arbaugh, were employed as trackmen. Claimant Keister is senior as a trackman to Mr. Arbaugh. Neither employee possessed seniority in the Carpenter Classification.

A temporary vacancy on a carpenter position originated on October 3, 1977. Trackman Arbaugh made a request to be permitted to fill the temporary vacancy pending the issuance of a bulletin and award. Mr. Arbaugh was the only employee who made such a request. He was, therefore, permitted to fill the carpenter vacancy during the bulletining period.

When the vacancy was subsequently bulletined both Claimant Keister and Mr. Arbaugh made application for the position. No bids were received from employees with established carpenter seniority. Carrier awarded the bulletined position to Mr. Arbaugh.

On the property, the Organization argued a violation of Rules 2(g), 18, 19, 87(b), (c), (f) and (g), none of which deal with the issues involved in this dispute. Before this Board, the Organization argues that Rules 2, 13 and 17 were violated when Carrier assigned the junior (as trackman) employee to the carpenter position.

The Organization's reference to Rules 2, 13 and 17 were not part of the on-property handling of this dispute. Therefore, this Board will not consider these new arguments at this level. However, even without considering these Rule references, it is apparent from the evidence of record that the opportunity existed for both trackmen to request to be used to fill the carpenter vacancy. Claimant elected to not take advantage of the opportunity. Therefore, we can only conclude that Carrier's determination relative to the fitness and ability of Mr. Arbaugh for the carpenter position vis-a-vis that of Claimant was reasonable. No probative evidence to the contrary has been presented. 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.