

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23033  
Docket Number MW-23019

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned M. M. Sanchez to the position of assistant foreman (System Steel Gang No. 6552) instead of assigning R. Porco thereto (System File D-26-78/MW-18-78).

(2) Claimant R. Porco shall be allowed the difference in what he received as a section laborer and what he should receive at the assistant foreman's rate beginning May 24, 1978 and continuing until the violation referred to in Part (1) hereof is corrected."

OPINION OF BOARD: Claimant in this case, a section laborer with a seniority date of 1972, was not offered a temporary assistant foreman's position on System Steel Gang 6552 that had been advertised in Bulletin 18. The temporary position was filled by M. M. Sanchez, who had a seniority date of 1978, pending the filling of the position by the successful bidder.

The union argues that under agreement Rule 11(g)2 claimant should have been offered the job of temporary assistant foreman while Carrier was advertising and awaiting bids for the position.

Rule 11(g)2, however, specifies that an employee must be working in the gang or at the location to qualify for assignment to a temporary position. Employee Sanchez was working on the gang and was at the location when temporary assignment was made. The record reveals that claimant was working in another section (Salida) when the temporary appointment was given to Sanchez in the Malta Section.

Rule 11(g)2 clearly states that employees must be members of the gang or working at the location to be eligible for the temporary appointment. Claimant was not in the Steel Gang 6552, nor was he working at Malta. He, therefore, does not qualify under Rule 11(g)2. This claim must 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. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.