

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23200  
Docket Number MW-23195

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
- (St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when the position of assistant foreman as advertised by Bulletin SG-34 and certain other positions as machine operator were awarded to applicants junior to Trackman M. G. Marion (System File B-1793/D-9784).

- (2) (a) Bulletin SG-34 be cancelled and rescinded;
- (b) The position of assistant foreman be awarded to Mr. M. G. Marion;
- (c) Claimant Marion shall be allowed the difference between what he earned as a trackman and what he should have earned as an assistant foreman if he had been awarded the assistant foreman's position beginning with the date of Mr. Gum's initial assignment thereto and to continue until the violation is terminated.
- (d) Claimant Marion shall also be awarded seniority as assistant foreman and machine operator as of the date junior applicants were awarded the positions referred to in Part (1) hereof."

OPINION OF BOARD: The pivotal question before this Board is whether Claimant was unjustly treated or discriminated against when the assistant foreman's position, for which he applied, was awarded to another employe on June 19, 1978. An unjust treatment investigation was held on October 27, 1978 pursuant to Agreement Rule 91(b) to determine whether Carrier improperly denied his position bid application and it was determined, upon the record compiled at that forum, that he was unqualified for this position. Claimant has appealed this disposition.

In his defense, he avers that his seniority date in Class I of the Track Sub-Department entitles him to this position, since he was senior to the other employe and that he possessed the requisite ability and merit to perform the position's duties.

Carrier contests these averments and argues that he was unqualified for this promotion and, thus, his seniority would not prevail as per Agreement Rule 33 where ability and merit must be sufficient. It contends he did not submit a written request in his own handwriting that he was interested in the Apprentice Foreman Training Program and that he was not recommended for this program by his supervisor.

In our review of this case, we must concur with Carrier's determination. Recognizing the seriousness of his allegations, particularly the discriminatory tone that he contends enveloped the selection decision, we painstakingly reviewed the investigative transcript to determine his qualifications and whether a subtle bias inhered in the selection decision. Outside of his vitriolic and scattered assertions that Carrier promoted other persons who were unqualified, he did not offer substantive evidence that he was indeed qualified. The purpose of an unjust treatment investigation is to permit an aggrieved employee the opportunity to present evidence that he was qualified and, at least, the equal in ability and merit to the applicant selected. It is designed to be a scrutinous process. From the record developed at the October 27 investigation, we do not find that Claimant or his supportive witnesses presented the kind of technical proof that is needed to adjudge fairly and objectively the scope and depth of his ability for the assistant foreman's position. To the contrary, we find that he didn't adduce sufficient evidence to establish his credentials. The record does not show that Carrier manifested bias in the selection of that position and we are constrained by these clear findings to deny the claim.

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 27th day of February 1981.