

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24112
Docket Number MW-23837

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Southern Pacific Transportation Company (Pacific Lines)

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

(1) The Agreement was violated when the position of extra gang foreman (Extra Gang No. 7) as advertised by Bulletin No. 505 dated March 13, 1979 was awarded to an applicant junior to Fabian Casarez (System File MofW 138-55).

(2) (a) The position of extra gang foreman (Extra Gang No. 7) be awarded to Mr. Fabian Casarez with seniority as such dating from March 29, 1979;

(b) Claimant Fabian Casarez shall be allowed the difference between what he earned in a lower rated position and what he should have earned as an extra gang foreman if he had been awarded the extra gang foreman's position beginning March 29, 1979 and to continue until the violation is terminated."

OPINION OF BOARD: It is contended by the Organization that Claimant F. Casarez being the more senior employee should have been awarded the Extra Gang Foreman position under Rule 8 over a less senior employee selected on March 29, 1979. However, a review of the record by this Board establishes that the other employee had already applied for and had qualified as a Foreman some time prior to Claimant's application for training under Rule 8, and in addition the other employee already had experience as a relief foreman at the time of Claimant's application. Thus, the Carrier's selection of the other employee for the position of Foreman as of March 29, 1979 was not arbitrary, capricious or in bad faith (See Third Division Award 23368). Therefore Claimant is not entitled to that promotion and the claim for back pay is denied accordingly.

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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

