

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25175
Docket Number MW-24630

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri-Kansas-Texas Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to award machine operator positions, as advertised by Circular #72 dated September 10, 1980, to Messrs. R. E. Chapman, G. Taylor, E. S. Weaver and S. Riley (System File 600-9/2579-5).

(2) Because of the aforesaid violation, positions of machine operators shall be awarded to each of the claimants with seniority as such dating from September 25, 1980 and they shall each be allowed the difference between what they would have been paid at the machine operator's rate and what they were paid at the track laborer's rate.

OPINION OF BOARD: The claims allege a violation of the seniority and promotion provisions of the Agreement by failure to assign posted Machine Operator positions to the Claimants.

Eleven positions of Machine Operator on District 3 were advertised. Two of the jobs were awarded to employees working as Track Laborers who held seniority as Machine Operators on District 3. No regular assignments were made to the remaining vacancies.

The Claimants hold seniority as Track Laborers on District 3. They assert an Agreement right to promotion to the Machine Operator positions by reason of their seniority ranking as Track Laborers. The Carrier disclaims any obligation to assign them on the basis of their seniority in the lower classification.

The claimed right refers to Article 3 and Article 5 of the Agreement. They read in pertinent part:

"ARTICLE 3. SENIORITY

Rule 1. Seniority begins at time employe's pay starts in the respective branch or class of service in which employed...when regularly assigned. Employes are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules."

* * *

"ARTICLE 5. BULLETINS AND ASSIGNMENTS

Rule 1. All positions except those of Track Laborers will be bulletined.

Promotions shall be based on ability and seniority; ability being sufficient seniority shall govern."

The Organization sees in the seniority rule the clear intention to confer the right to be considered for promotion to a higher classification on the basis of the seniority earned in a lower classification. The Organization understands the combined effect of the two rules to mean in this instance that the Claimants had both the required seniority and ability in their Track Laborer service for assignment to the Machine Operator positions and that they were thus entitled to such placement. Once assigned, the Organization says, they had the right to be given the opportunity, if necessary, to demonstrate their ability within a reasonable time.

The Carrier maintains that Article 3 is alone controlling and that established precedent of this Third Division on this property supports its action as to these Claimants.

The fundamental issue before this Board is whether, under the seniority rule of Article 3, employees regularly assigned in one classification are entitled to consideration for positions in a higher classification on the basis of their seniority in the lower classification.

The issue is fully familiar to this Third Division. It has been before us on numerous occasions in similar disputes between these particular parties on this property, commencing with Award 11587 rendered under a substantially similar seniority rule in the 1949 Agreement. Whatever uncertainty may perhaps have been suggested in earlier decisions, a long line of awards issued in the past ten years by this Division and by Special Boards has firmly established a uniform interpretation of the Article 3 seniority rule. All Awards in that decade have concluded that seniority in the lower classification does not automatically grant the right to promotion to a higher classification.

We have once again reviewed the ten-year line of awards and examined them anew in light of the Organization's detailed arguments as to why they should not control the decision in the dispute now before us. We have found no good reason to upset those decisions or to hold them inapplicable to the facts and essential issues now before us. Those awards were rendered under the same seniority provisions as those now before us. They presented no significantly distinguishable circumstances from those in this dispute. They are rationally based and free of palpable error.

No persuasive argument has been made as to why we should nevertheless reject or diminish the force of those awards at this time on this record. We cannot accept the Organization's argument for disregarding those awards on the general principle that promotion is commonly recognized as the fair reward for years of service to an employer. However commendable this or any other promotion policy may be, this Board has no authority to declare it for the parties when they have not deemed it advisable to do so themselves.

We accept and reaffirm the awards of the past ten years, and we conclude that the Claimants were not entitled as a matter of right to be considered for the Machine Operator positions on the basis of their seniority as Track Laborers. As they had no right to the position, the question of their qualification for it is not material.

In view of the Board's conclusion with respect to the basic substantive issue, we do not find it necessary to determine whether valid bids were filed by all Claimants.

The claims 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

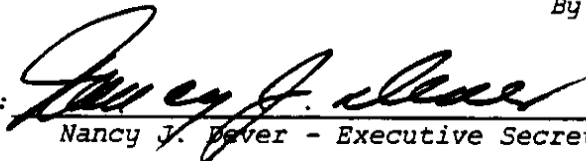
That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 14th day of December 1984.