

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25340  
Docket Number MW-24653

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(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 Carpenter D. L. Pisarczyk was not promoted to Lead Carpenter in recognition of his seniority (System File D-7-81/MW-8-81).

(2) The Carrier further violated the Agreement when it failed and refused to bulletin the position of Lead Carpenter, B&B Gang No. 6003.

(3) Because of the aforesaid violations, the position of B&B Lead Carpenter shall be advertised by bulletin, the claimant shall be assigned to said position pending bulletin and assignment and he shall be allowed the difference between what he earned as a carpenter and what he should have earned as a Lead Carpenter, if he had been assigned as Lead Carpenter, beginning December 2, 1980 and continuing until the position of Lead Carpenter, B&B Gang No. 6003 has been properly bulletined and assigned.

OPINION OF BOARD: The pivotal question in this dispute is whether Carrier violated the Collective Agreement when it assigned a junior B&B Carpenter, seniority date April 18, 1977, to the position of Lead Carpenter on December 2, 1980.

Claimant argues that the position of Lead Carpenter is ranked ahead of the Carpenter's position in the Agreement's Wage Appendix and assigned supervisory responsibilities and duties above those of a Carpenter. He asserts that the Lead Carpenter's position is a promotional position which obligates Carrier to follow the principle of seniority when making such assignments. He contends that Carrier violated Rule 9(a) when it assigned the junior employee to the Lead Carpenter's position and additionally violated Rule 11(a) when it failed to bulletin the position. Moreover, he avers that the compensatory differential required by Rule 38(b) supports his arguments. These Rules are referenced hereinafter:

"9(a). Seniority to Prevail. A promotion is an advancement from a lower to a higher class. Promotion shall be based on fitness, ability and seniority. Fitness and ability being sufficient, seniority in succeeding lower classes shall prevail."

"11(a). Bulletining of New Positions - Vacancies. Except for section and extra gang laborers, new positions and vacancies including temporary vacancies of thirty (30) calendar days or more duration created by the absence of the regular occupant of a position account sickness, leave of absence, etc., shall be bulletined to all employees holding seniority and assigned in the class in which the new position or vacancy occurs."

"38(b). Lead Workmen. Mechanics may be assigned as lead workmen in charge of one or more men and when so assigned or used will be paid a differential of six cents (6¢) per hour and held responsible for work performed, including the keeping of time and material reports."

Carrier contends that the position of Lead Carpenter is within the Carpenter's class as defined by Rule 3 and thus, not a promotion since it does not represent a change in class. It asserts that at the time the contested assignment was made, Claimant was working as a Painter in Class 6 while the junior employee was working as a Carpenter in Class 5. It argues that Claimant had not worked on a regular basis as a B&B Carpenter and maintains that he never complained or requested to be moved. It argues that Rule 38(b) fully supports its interpretative position since the permissible assignment of a mechanic as a lead workman is not considered a promotion. It argues that the Board disposed of this question when it held in Third Division Award No. 4746 that a leadman is not considered a seniority rank under the Agreement.

In reviewing this case, the Board concurs with Carrier's position. While seniority is a significant consideration in promotional decisions, assuming arguendo, that the affected person possesses sufficient fitness and ability for the position, the type of assignment made here was not a promotion within the defining language of Rule 9(a). This Rule is inapplicable as well as Rule 11(a). Rather, under Rule 38(b) which is relevant herein, mechanics may be assigned as lead workmen, which is not a promotion, but they must be paid a differential of six (6¢) cents per hour. Carrier was not barred from assigning the junior employee to the position of Lead Carpenter on December 2, 1980, since a leadman does not hold seniority rank under the Agreement. The assignment was not an Agreement violation. In Third Division Award No. 4746 which is on point with this case, we held in pertinent part that:

"A leadman holds no seniority as such, it not being a seniority rank under the Agreement. Under the Agreement, mechanics may be assigned as leadman and will be paid an additional five cents per hour."

This decision is controlling herein. We will 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.

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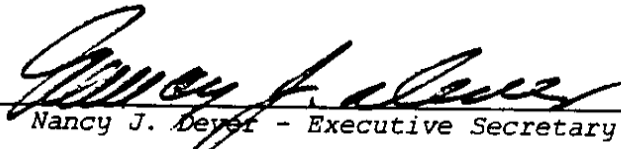
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.