

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25965

Docket Number MW-25771

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company (Northern Region)

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

(1) The Carrier violated the Agreement when it omitted Mr. J. Shinsky's name from the 1983 Track Foremen's Seniority Roster (System File C-TC-1618/MG-3954).

(2) As a consequence of the aforesaid violation Mr. J. Shinsky's name shall be included on the Track Foremen's Seniority Roster with foreman seniority dating from July 22, 1982."

OPINION OF BOARD: This is a Claim based on the Carrier's failure to place the Claimant on the Seniority Roster for Production Foreman. There is no dispute that the Carrier posted the temporary position of Production Foreman at Baldwin, Mich., under Advertising Bulletin NO. 110, on July 9, 1982. The Claimant bid for and was awarded the position on bulletin dated July 22, 1982. On July 23, 1982, the Claimant was advised that the award had been issued in error, and the Claimant was not assigned to nor did he work on the position of Production Foreman at Baldwin. Thus, he did not establish seniority as Production Foreman by virtue of the momentary award to him of the position at Baldwin in Bulletin No. 110.

Beyond this, the alleged facts presented by the parties are in conflict. It is the Organization's position that the Claimant also bid on the position of temporary Production Foreman at Sebawaing in Bulletin No. 109, simultaneously with his bid on the position at Baldwin. It is the Claimant's contention that he was advised on July 23, 1982 that, while not being awarded the position at Baldwin, he was entitled to the position at Sebawaing by virtue of his seniority standing on the bid. He then worked as Production Foreman at Sebawaing from July 26 through July 29, when that position was also cancelled. The Organization argues that by virtue of his service for this period, the Claimant is entitled to standing on the Production Foreman Seniority Roster.

The Carrier, on the other hand, denies that the Claimant was awarded the Sebawaing position but was simply directed to serve in the position "temporarily pending bulletining". On this basis the Carrier contends that the Claimant is not entitled to seniority for such service.

Applicable Rules are as follows:

"RULE 1

SENIORITY - APPROVAL OF APPLICATIONS

(a) Seniority will begin at the time pay starts and in the district, sub-department, group and classification in which employed, subject to Rules 3(e) and 5 except that in case of persons being employed for vacancies or new positions bulletined under Rule 17, seniority will not be established until awarded a bulletined position (either permanent or temporary), and seniority under such circumstances will date from date of bulletin awarding the position the same as is provided for employees already in service going to positions other than trackmen.

(b) When an employee already in service performs work on a temporary basis in a classification other than trackman and other than that in which he is assigned and holds seniority, no seniority will be established unless such employee is awarded a bulletined position (either permanent or temporary) in the new class referred to, and seniority in this class will be as of the date assigned by bulletin . . . ."

(d) . . . Employees without previous seniority in the class or rank in which awarded a bulletined position will not establish seniority in the new class or rank unless they actually go to and work the position awarded them . . . ."

It is not the responsibility of the Board to determine conflicts in matters of fact. There is no showing by the Organization that the Claimant was in fact awarded the Production Foreman position at Sebewaing by bulletin (in contrast to the award, later retracted, for the Baldwin position). Regardless of what he may have been told or understood as to service at Sebewaing, the Claimant cannot show that he was awarded the position by bulletin. Whether he might have been awarded the Sebewaing position, absent a posting of the Baldwin position, is necessarily speculative. Under these circumstances, the Board finds no basis under Rule 1 for award of production foreman seniority.

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

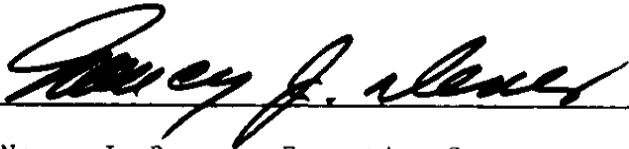
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.