

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26355  
Docket Number MW-26542

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Chicago and Western Indiana 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 permit Plumber-Mechanic J. Tatinger to displace Carpenter Foreman R. Farnesi, subsequent to the abolishment of his position (System File BB-2-84).

(2) The claimant shall be allowed the difference in pay between that of a carpenter and that of a carpenter foreman for each hour junior employe R. Farnesi worked said position.

(3) The claimant shall be allowed a seniority date as carpenter foreman as of the date he was not allowed to displace the junior employe (March 26, 1984)."

OPINION OF BOARD: The facts of this case are identical to those of Award 26353 and will not be reiterated here. All discussion of facts of this case include those of Award 26353 by reference. When the Carrier bulletined the Carpenter position on March 12, 1984, (Notice No. 2) it was bid on by Claimant who had established seniority as a Carpenter on August 25, 1947, albeit he held the actual position of Plumber Mechanic at the time the new Carpenter position had been bulletined in March of 1984. Claimant held Plumber Mechanic seniority since March 10, 1980, as noted in Award 26353, as well as seniority as Painter Foreman since April 1, 1968. When Claimant bid on the Carpenter position in March of 1984, when his own position of Plumber Mechanic was being abolished, he did so in the following language:

"Under date of March 12, 1984 (Bulletin Number 1) I was informed that my position of Plumber-Mechanic was being abolished effective at 4:00 P.M., March 23, 1984.

Therefore, in compliance with Rule 26 of the Agreement, I hereby advise that I wish to exercise my seniority and displacement rights to the position of Carpenter Foreman which is presently being held by junior employee R. Farnesi.

It will be noted here that I am the senior employee, Rank #1, of all the employees holding seniority within the Bridge and Building Department. Thereover, I have previously and on numerous occasions filled and performed the duties of Carpenter Foreman during the absence of the incumbent foreman, and hold seniority as Painter Foreman.

If for some unforeseen (sic) and unbeknown reason the Carrier does not assign me to the above cited position, I therefore enter any bid for the position of Carpenter as advertised in Bulletin Notice Number 2, dated March 12, 1984, in compliance with Rule 13.

It is my preference to be assigned to the Carpenter Foreman position."

Claimant was subsequently assigned to the position of Carpenter. After this a Claim was filed which alleged that the Carrier was in violation of the Agreement because it failed to allow Claimant to exercise his seniority by displacing Carpenter Foreman R. Farnesi who held Carpenter Foreman seniority of January 1, 1983.

A study of the record shows that Claimant had never established seniority as Carpenter Foreman, although he had established seniority in other classifications as noted above. It was, in fact, his seniority in the Carpenter classification, for example, which gave him prior rights to the new Carpenter position in March of 1984 over those of two fellow workers who were also Carpenters as well as the Claimants in Third Division Award 26353. It is axiomatic that an employee cannot claim seniority rights in a job classification if seniority has never been established in that classification.

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 Employee involved in this dispute are respectively Carrier and Employee 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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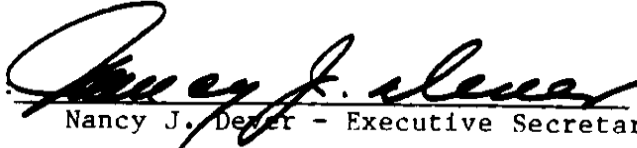
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest.

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.