

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1) The Agreement was violated when the position of Regional Gang Foreman, as advertised by Bulletin No. 8-84 dated April 6, 1984, was awarded to Foreman E. E. Womack instead of Foreman M. R. Arnold on April 20, 1984 (Carrier's File MofW 3-158).

(2) The position of Regional Gang Foreman, as advertised by Bulletin No. 8-84 dated April 6, 1984, shall be assigned to Foreman M. R. Arnold and he shall be compensated for the differential in pay between that of Regional Gang Foreman and what he was paid in a lower rated position beginning April 20, 1984 and all days subsequent thereto until the violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant established Foreman's seniority, Class No. 1, in the Carrier's Track Sub-Department as of March 1, 1979. E. E. Womack established similar seniority on July 7, 1981. Class No. 1 embodies 12 Foreman positions at differing rates of pay.

After bulletining the position on April 6, 1984, and after Claimant and Womack bid on the position, on April 20, 1984, the Carrier assigned the Regional Gang Foreman's position on Surfacing Gang No. 38 to the junior employee. On the property, the Carrier asserted that Claimant lacked work experience and knowledge necessary to perform the job in that Claimant never

worked with a surfacing gang while the junior employee worked as a Student Foreman and Relief Foreman; regional gangs use more varied and complex equipment than division gangs; and the Carrier experienced difficulties with Claimant's ability to perform as a Foreman due to his lack of ability to supervise and get along with fellow workers.

Subject to a demonstration of arbitrary or capricious conduct, fitness and ability determinations are the Carrier's prerogative. Third Division Awards 26090, 22980, 23063. Arbitrary or capricious conduct has not been demonstrated in this case. The Carrier's reasons for choosing the junior employee over Claimant are not refuted and establish a rational basis for the selection.

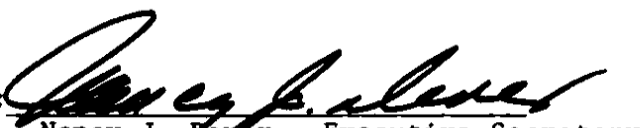
We cannot find sufficient contractual support for the Organization's contention that Claimant's greater Class 1 Foreman's seniority in and of itself gave Claimant superior rights over the junior employee for the Regional Gang Foreman's position on Surfacing Gang No. 38 - a position that Claimant never held before - without regard to Claimant's fitness and ability for that position so as to dictate a different result. See Third Division Award 21699 between the parties which recognized (in the context of that case) the right to qualify for a higher rated position within a general class. The Organization's assertion that strict seniority prevails for higher rated jobs within the general class of Foreman is inconsistent with Award 21699. The Organization's argument that Award 21699 involved the difference between skills of Class A and Class B Carpenters whereas this case involves supervisory skills of Class 1 Foremen is not persuasive. As shown in Award 21699, the jobs at issue all fell within a designated class. There, the Carpenter positions came under Class 26. Here, the 12 Foreman positions are listed under Class 1.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.