

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30246
Docket No. MW-30258
94-3-91-3-726

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

- 1) The Agreement was violated when the Carrier awarded the position of assistant foreman on Patch Rail Laying Gang No. 301, advertised by Bulletin No. 301-90-1, to junior employe C. B. Short instead of Mr. G. Grunenberg. (System Docket file #'s MW-1540)
- 2) As consequence of the aforesaid violation, Mr. G. Grunenberg shall be "...paid the difference between the Trackman rate of pay which he is presently receiving and the Assistant Foreman rate which he should be receiving. This is to begin on May 1, 1990 and continue for each scheduled workday thereafter. We are also asking that the claimant be paid any overtime worked by Mr. Short during this period of time. We are also asking that correction be issued stating that the Assistant Foreman job was awarded to Mr. Short in error and the correct applicant was the claimant."

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 employe 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.

Both Parties raised objections to new argument presented to the Board in the other's Submission. No arguments so offered have been considered by the Board in its determination.

At issue in this case is the Carrier's application of Rule 3 ("Selection of Positions") - Section 1, of the Agreement between the Parties. That Section reads in pertinent part:

"Section 1. Assignment to Position

In the assignment of employees to positions under the Agreement, qualification being sufficient, seniority shall govern."

In April 1990, Carrier bulletined an Assistant Foreman position. Both Claimant and another employee, junior to Claimant submitted bids for the position. Carrier awarded the position to the junior employee on the basis of his computer competency. The Organization filed a claim, in which it protested that the position should have been awarded to the senior employee.

A careful review of the record before the Board does not support the Organization's contention. According to the language of Rule 3, Section 1, Carrier considered the sufficiency of an applicant's qualification before considering his/her seniority in awarding positions. The Organization has argued that 1) the Carrier has not proven Claimant did not have sufficient qualifications, and 2) that it never gave Claimant the opportunity to qualify in the Assistant Foreman position.

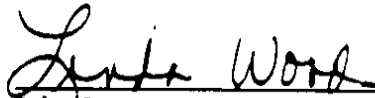
It has long been held on this and other Boards that, in the absence of persuasive evidence to the contrary, the Board will not "second guess" Carrier's good faith determination of an employee's qualification for a position. Further, under the terms of Rule 3, Carrier is not obliged to give a senior employee who lacks "sufficient qualification" the opportunity to qualify for a position through a "trial period."

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

. Dated at Chicago, Illinois, this 8th day of June 1994.