

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31315
Docket No. MW-30210
96-3-91-3-658

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 Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated when the Carrier refused to allow Track Foreman C. Garner to exercise his seniority in displacing junior Track Foreman C. W. Ogburn from his position at Kirby Yard on November 5, 1990 (System File MW-91-12/497-83-A SPE).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be allowed the difference in rate of pay for all overtime hours lost, plus any travel time, excessive mileage, plus all expenses incurred by him commencing November 5, 1990 and on a continuing basis in addition to any other seniority rights which he may incur account not allowed to displace a junior employee."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In Third Division Award 30592, this Board held that the Carrier did not violate the Agreement when it assigned junior employee C. W. Ogburn rather than Claimant to a Material Foreman's position advertised in Vacancy Bulletin No. 022B dated June 19, 1989 and effective July 24, 1989. In Award 30592, this Board found:

"There appears to be no dispute that Claimant did not possess 'a working knowledge' of either PAMCO Catalog System or the SP Computer System (TCC and Timeshare), while the successful bidder [Ogburn] did have that knowledge. Given this fact and the bulletined requirements for the Material Foreman's position, it is not unreasonable to conclude that Claimant did not possess the basic qualifications for the job."

In this case, Claimant was displaced from his Track Foreman's position effective November 5, 1990. Claimant attempted to displace Ogburn in the Material Foreman's position, but was again told that he did not have the necessary ability or qualifications to displace into that position. Claimant then displaced another employee.

Nothing appears to have changed with respect to Claimant's qualifications since Claimant was originally denied the Material Foreman's position in 1989 which action was upheld by this Board in Award 30592. For the reasons set forth in Award 30592, which we do not find to be palpably in error, this claim will also be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.