

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31528  
Docket No. MW-31363  
96-3-93-3-78**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (former  
( Oklahoma, Kansas and Texas Railroad Company)

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

- (1) The Agreement was violated when the Carrier awarded an assistant foreman position to junior employee K. R. Manry, on Bulletin No. MKS01601, rather than awarding and assigning Mr. A. S. Bell, III, who was senior, available and willing to be assigned thereto (System File MW-92-13-OKT/920214 OKT).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. S. Bell, III shall be compensated "...for the difference in rate of pay between that of a MKT-OKT-GH&H Track Laborer and an Assistant Foreman, all overtime hours worked and MKT-OKT-GH&H Assistant Foreman seniority rights commencing February 13, 1992 and on a continuing basis...."

**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.

On February 6, 1992, Carrier bulletined a temporary seasonal vacancy of Assistant Foreman.

On February 13, 1992, Carrier canceled the February 6 bulletin stating no qualified bids were received, and then on the same date, issued the same Assistant Foreman's vacancy and did accept and assign an employee junior in seniority than Claimant.

The Organization has filed this grievance contending Claimant was senior in trackman's seniority than the one assigned; that Claimant was the "most qualified"; and that "the Carrier officers have a personal vendetta against" Claimant.

The personal vendetta argument is rejected. To establish that allegation, the Organization must do much more to substantiate its accusation than just saying it is so.

It is true that Claimant is senior to the employee assigned, but after reviewing the facts, the Board finds no support for the Organization's contention that Claimant was "the most qualified."

Claimant had been a Foreman, but just 17 days prior to the Assistant Foreman's vacancy, he resigned his Foreman's rights. It was voluntary, but it was either that or face a disciplinary hearing for releasing a track warrant while there was still equipment and employees working on the track. They were left without protection. Fortunately, no one was hurt.

Claimant's disciplinary record shows two dismissals caused by acts of violence and neglect, displaying a temperament not conducive to leadership and, at times, the Assistant Foreman functions as a leader.

The Organization has not established that Carrier's actions were arbitrary or lacking in judgment. The claim will 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 July 1996.**