

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31589
Docket No. MW-29560
96-3-90-3-506

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(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 improperly advertised the material foreman position on Vacancy Bulletin No. 022B dated June 19, 1989 (System File MW-89-101/485-72-A SPE).
- (2) The Agreement was further violated when the Carrier assigned junior employee C.W. Ogburn instead of senior employee P. Torres to the material foreman position advertised on Vacancy Bulletin No. 022B effective July 24, 1989.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. P. Torres shall be assigned to the position in question and he shall be compensated for all wage and seniority loss suffered beginning July 24, 1989 and continuing until the violation in question 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 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.

An identical claim was filed by the Organization on behalf of a different employee, Mr. C. Garner, who is senior to Mr. P. Torres, the Claimant in this case. The employee awarded the position was junior to both Mr. Garner and Mr. Torres. In denying the claim of the senior employee, in Third Division Award 30592 this Board observed: "Carrier noted that its decision as to which employee was qualified had been based on its evaluation of each of the candidates' performance of a simple exercise of ordering as with using a computer and PAMCO." After reviewing all of the pertinent contract language and arguments pro and con, the Board denied the claim of the senior employee, Mr. Garner, stating: "Based upon our review of the parties' Agreement, we find no contractual violation in this case." No meaningful distinction appears in the present record which would warrant a different result in Mr. Torres' case.

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 29th day of August 1996.