

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32624
Docket No. MW-31233
98-3-93-3-155**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on March 25, 1992, the Carrier awarded a Rail Train Supervisor position to junior Machine Operator M. G. Ramirez, III instead of Mr. T. D. Galvan, who was the senior applicant and available and willing to be assigned thereto (System File MW-92-84/MofW 92-51 SPE).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. T. D. Galvan shall be assigned to the Rail Train Supervisor’s position and compensated the difference in rate of pay between that of a machine operator and that of Rail Train Supervisor and all overtime beginning March 25, 1992 and continuing.”**

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 were given due notice of hearing thereon.

On February 10, 1992, the Carrier and Organization entered into a letter agreement establishing a position designated as Rail Train Supervisor. That letter agreement provided:

“In conference today, it was agreed the Company may established a position designated as ‘Rail Train Supervisor,’ with a rate of pay of \$2765.94 per month, which may be used over the Southern Pacific (Eastern Lines) and the St. Louis Southwestern Railway Company.

This position will be headquartered in Houston, Texas, and will be bulletined on both the Southern Pacific Transportation Co. (Eastern Lines) and the St. Louis Southwestern Railway Company to employees holding machine operator seniority.

Applicant must have the ability to operate, maintain and move the power and all ramp cars around the SP Eastern Region and SSW Rwy. Co. Applicant must also possess the ability to train and supervise all loading and unloading of new and used rail, safely.

Assignment will be made in accordance with seniority, fitness and qualifications. However, Management to be the judge, subject to appeal.”

Mr. T. D. Galvan, the herein Claimant, bid on the newly established Rail Train Supervisor position. Galvan at the time, it is apparent from this record, possessed the “ability to operate, maintain and move the power and all ramp cars.” Also, he possessed the “ability to train and supervise all loading and unloading of new and used rail, safely.” These were the special qualifications, prerequisite for consideration for assignment agreed upon by the parties in the February 10, 1992 letter agreement. That agreement did not grant Carrier the privilege of assigning the job to the most qualified individual that applied. Nonetheless, Carrier gave the job to junior employee, Mr. M. G. Ramirez, III, on the stated contention that “he was the most qualified individual to supervise the train.”

The February 10, 1992 letter agreement did not provide that the most qualified individual would be assigned to the newly created Rail Train Supervisor position. The last paragraph of that agreement provided that assignment would be made in accordance with seniority, fitness and qualifications. It has not been established that Claimant did not possess the seniority, fitness and qualifications for the position. Furthermore the February 10, 1992 letter agreement cannot fairly be read that the parties intended that the job go to the most qualified applicant. Accordingly, the agreement was violated when Carrier selected a junior employee it believed to be most qualified for the position.

The agreement was violated. The claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of June 1998.