

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41058  
Docket No. MW-41174  
11-3-NRAB-00003-100018**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Mr. J. Olson to the Group 27 System Welding Foreman position on Gang 7813 on Bulletin No. 4202 effective August 1, 2008 and instead assigned junior employee M. Gigous (System File R-0819U-301/1507691).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Olson shall now ‘. . . be allowed pay for all wages lost attributed to this incorrect assignment of the Welding Foreman position. As indicated, this claim is filed with the understanding the claim period commenced August 1, 2008, the effective date of the assignment, and would continue until such time Claimant Olson is allowed to fill the referred to assignment and/or given a Group 27 System Welding Foreman seniority date and ranking senior to employee Gigous.’”

**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.

The facts indicate that on July 10, 2008, the Carrier advertised a Group 27 System Welding Foreman position on Gang 7813, with an on-line headquarters, in the vicinity of Superior, Wisconsin. No bids were received from any employees holding seniority in the specific class involved (i.e., Group 27 System Welding Foreman). The Claimant and junior employee M. Gigous both made application for the assignment, although neither held seniority in the aforementioned classification. On August 2, 2008, Gigous was assigned to the position.

It is the position of the Organization that Rule 19(b) clearly states that if applicants do not have seniority in the group and class, the positions will be filled from qualified employees in the other groups of the Sub-department and "Where ability and qualifications are sufficient, seniority will prevail." The Organization argued that there is no dispute that the Claimant had superior seniority as a System Welder. It further asserted that he met the qualifications from his prior job experiences and should have been assigned. It concluded that the Carrier erred when it assigned the junior employee rather than the Claimant, and it requested that the claim be sustained as presented.

It is the Carrier's position that the assignment of Gigous to the position in question rather than the Claimant was correct because he had previously been assigned to Foreman and Assistant Foreman positions, whereas the Claimant had no previous Foreman experience. It argued that because the grieved position is responsible for the daily operation of the gang and, accordingly, it required a great deal of experience, knowledge and responsibility, the Carrier determined that Gigous had the requisite fitness and ability, whereas the Claimant had not shown those qualifications. The Carrier also relied upon Rule 19(b) and, in particular, the last sentence which states: "Management will be the judge with respect to positions covered by this section." It closed by asking that the claim remain denied.

The record is clear that the Carrier awarded the Foreman position on Gang 7813 to Gigous even though he had less seniority than the Claimant did. Rule 19(b) states the following:

“Positions of foremen and supervisors will be filled by promotion of available qualified employees. Positions of foremen, supervisors, or other positions that are not filled through bulletining, to employees in seniority class will be filled from available qualified employees in the other classes of the seniority group. In the event they are not filled, they will be filled from available qualified employees in other groups of the subdepartment. Where ability and qualifications are sufficient, seniority will prevail. Management will be the judge with respect to positions covered by this section.”

On the property, the Carrier stated that system gangs are high production gangs and the Foreman position is key in allowing high production, which was not disputed by the Organization. In this instance, the record reveals that junior employee Gigous' past experience as a Foreman and Assistant Foreman provided him the requisite fitness and ability, whereas the Claimant's inexperience in a leadership role did not give him the necessary fitness and ability to oversee a high production gang. The Board finds and holds that the Carrier was within its rights to select the junior employee rather than the Claimant and there was no violation of the Agreement.

**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 23rd day of August 2011.