

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41669
Docket No. MW-41461
13-3-NRAB-00003-110014**

The Third Division consisted of the regular members and in addition Referee Brian C. Clauss 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 Carrier violated the Agreement when it failed and refused to assign Mr. D. Slattery to a Group 6 Tie and Rail Inspector position posted on July 9, 2009 on System Bulletins #383 and #384 and instead assigned said positions to junior employees E. Hansen and V. Held on July 16, 2009 (System File D-0920U-205/1523881).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant D. Slattery shall now “. . . be properly assigned a Group 6 Tie and Rail Inspector position pursuant to System Bulletin #383. Further, we request the Claimant be properly compensated for the difference in pay between the grieved position and position he is currently working. Specifically, Claimant shall be compensated as if he were holding a Group 6 position until such violation ceases and he is properly assigned to the position”**

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 Organization argues that the Carrier violated the Agreement when it assigned two junior employees to the Group 6 Rail Inspector position. The Carrier counters that this issue has been addressed in Third Division Awards 40941 and 40943 and other Awards.

Award 40943 stated:

“The issue presented by this claim - whether the Carrier violated the Claimant’s seniority rights when it promoted a junior employee to the Group 6 Section Tie and Rail Inspector position - is the same as the one raised in Third Division Award 40941. The record on the property contains similar arguments and exhibits as were presented in that case, and its resolution also involves the interpretation of Rule 19. The facts are also similar. In this case the Carrier advertised three Group 6 Section Tie and Rail Inspector positions for Gang 9089 in March 2008. One assignment was made to an employee with less Track Sub-department seniority than the Claimant. There is no dispute that neither employee had seniority in the classification. The Carrier explained that it determined that the Claimant was not qualified because, in accord with historical practice, it considered previous Foreman or Assistant Foreman seniority as one of the qualifications of the position because it shows

that the employee is qualified to supervise the restoration and renewal of track and has familiarity with use of the computer, a skill also required in the Inspector position. It presented evidence of its consistent application of such practice.”

In the instant matter, the Carrier indicated that the Claimant’s 2004 disqualification was part of the consideration as to whether the Claimant was qualified for the position. Further, the two employees who were awarded the position had previously held Foreman and Assistant Foreman positions, whereas the Claimant had never re-qualified after his disqualification.

Again, the language of Award 40943 is instructive where it states:

“ . . . Because the Claimant had no Foreman seniority, and only worked as a Track Machine Operator, Welder and Sectionman, and the junior employee assigned the position had previous Foreman and Assistant Foreman seniority and experience, the Carrier concluded that the junior employee was the senior qualified bidder on the position. This claim protests such determination and the Carrier’s projection of a Group 8 Foreman seniority date as a qualifying condition for a position the Organization asserts is completely different.

The positions of the parties in this case are the same as those contained in Award 40941, and are incorporated into this Award. A careful review of the record convinces the Board that the rationale set forth in Award 40941 is equally applicable herein, and that this claim must also be denied because the Organization failed to meet its burden of proving that the Claimant was qualified, or that the qualification determination made by the Carrier in this case was arbitrary, unreasonable, or capricious.”

The Board carefully reviewed the evidence. The above-cited Awards are dispositive. The Organization cannot meet its burden in the instant matter by proving that the Carrier’s determination was arbitrary, unreasonable or capricious.

Form 1
Page 4

Award No. 41669
Docket No. MW-41461
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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 18th day of June 2013.