

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43022  
Docket No. MW-42380  
18-3-NRAB-00003-130387**

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

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

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Assistant Foreman J. Woodward to Bulletin No. MSF1194 for the system assistant foreman position on Gang 9167 on May 25, 2012 and instead assigned junior employee E. Helm (System File UP307WF12/1575520 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Woodward shall now be awarded/assigned to the aforesaid Bulletin No. MSF1194 for the system assistant foreman position on Gang 9167 and he shall be compensated for the difference in pay between the division assistant foreman rate of pay and the system assistant foreman rate of pay for all hours worked by Gang 9167 beginning on May 25, 2012 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.

This claim protests the Carrier's failure to award the Claimant a System Assistant Foreman position on a bulletin where he was the only applicant with Assistant Foreman seniority. The Claimant was hired on October 3, 2011, and obtained an Assistant Foreman position on the Division on April 14, 2012. Bulletin No. MSF1194 was posted on May 11, 2012 for an online System Assistant Foreman position on Gang 9167, it closed on May 21, 2012 and an employee with a service date of June 1, 2010 (Helm) was awarded the position on May 25, 2012.

The Organization asserts that the Claimant was the senior qualified bidder to the position. It points out that the Claimant already had a Division Assistant Foreman seniority date and should have been awarded the system job over the employee who did not possess an Assistant Foreman seniority date, noting that there is only one seniority roster for Assistant Foreman. The Organization disputes the Carrier's contention that there is a substantial difference in job duties and responsibilities between Division and System Assistant Foremen, contending that qualification on the Division translates to qualification on the System. It maintains that the Carrier does not follow FRA rules, alleging that it has promoted employees into the System Assistant Foreman position who have less than one year of service.

The Carrier argues that the Claimant was not the senior qualified bidder, noting that the parties recognized the difference in the duties and responsibilities of the position of System Assistant Foreman from that of a Division Assistant Foreman in Rule 19(b), which identifies jobs requiring specialized skills. It contends that the Claimant's seniority and experience as a Division Assistant Foreman did not make him qualified for the System Assistant Foreman position. The Carrier further points out that, at the time of the bid, the Claimant did not meet FRA Rule 213.7 standards, which require at least one year of railroad track maintenance experience for employees to supervise track renewals and inspections, which is part of the responsibilities of a System Assistant Foreman. It notes that the Organization merely alleged that the Carrier has promoted employees without the requisite one

year experience, but failed to meet its burden of proving that allegation or any violation of the Agreement.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. There is no dispute in the record that the Claimant was a seven (7) month employee at the time he bid on the System Assistant Foreman position in Bulletin No. MSF1194, and that FRA Rule 213.7 requires an employee assuming a position supervising track renewals and inspections to have at least one year of railroad track maintenance experience. It is the Carrier's right to set minimum qualifications for a position, as it did for the System Assistant Foreman position in this case, and the Board is unable to find that its determination that the Claimant was not qualified due to his failure to meet FRA standards was arbitrary or unreasonable. The Organization has failed to meet its burden of proving a violation of the Agreement in this 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 March 2018.