

PUBLIC LAW BOARD NO. 2960

AWARD NO. 173  
CASE NO. 287

**PARTIES TO DISPUTE:**

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned a junior foreman to a tie gang on Assignment Notice 88-166 dated August 11, 1987, instead of assigning senior Foreman L. L. Hughes (Organization File 4LF-2268T; Carrier File 81-89-52).
- (2) As a consequence of the aforesaid violation, Foreman L. L. Hughes shall be assigned to the tie gang foreman's position, '\*\*\* compensated for the differential in wages received and those wages he would have received in the capacity of Foremen of the Tie Gang and reimbursement for Camp Car expenses lost as a result of his failure to be properly assigned.'"

**OPINION OF THE BOARD:**

The basic facts are not disputed. On August 1, 1988, the Carrier issued Bulletin 88-166 establishing the position of a Class Foremen on a tie gang to commence work on the Tara Subdivision, then onto the Albert Lea Subdivision, on the Iowa Falls Subdivision and finishing on the Trenton Subdivision. This gang consisted of a track foreman and 23 employees. Bids were filed by the Claimant and Track Foreman J. P. Coolican, who is junior in seniority to the Claimant.

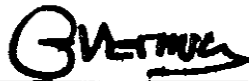
This case involved the application of Article II, Section of the "Coal Line Agreement" of March 12, 1980, which reads:

"All positions of foreman on gangs consisting of 18 or more employees will be bulletined to employees on the appropriate seniority district pursuant to the procedures of Rule 16, but such positions will be filled on the basis of qualification and seniority, qualification to be a first consideration."

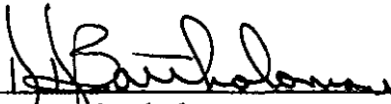
It is well established under this language that for seniority to prevail, the evidence in favor of the Claimant must demonstrate, in convincing fashion, that his qualifications are relatively equal to or exceed those of the junior employee. In this case we are not so convinced. While the Claimant is qualified as a Class A foreman, this does not mean, per se, that he is as qualified as the junior employee. The Carrier has discretion to make such judgements, and there is no evidence that it was abuse or exercised in an irrational or arbitrary manner. Accordingly, the claim must be denied.

**AWARD:**

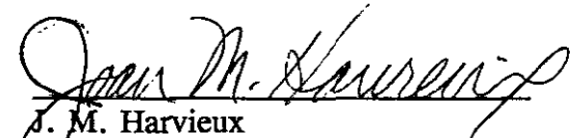
The claim must be denied.



Gil Vernon, Chairman



D. D. Bartholomay  
Employee Member

  
J. M. Harvieux  
Carrier Member

Dated: 11/9/93