

PUBLIC LAW BOARD NO. 2960

AWARD NO. 97
CASE NO. 131

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to assign Foreman M. J. O'Leary to the Rail Buc Gang foreman's position on Bulletin 83-287 and instead assigned a trackman (C. E. Hook) with no foreman's seniority. (Organization File 4T-3925; Carrier File 81-83-165).
- (2) Claimant M. J. O'Leary should now be assigned the foreman's position and compensated for the differential in wages and hours of service rendered by Mr. C. E. Hook.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The facts are essentially undisputed. On June 21, 1983, the Carrier posted a bulletin advertising a vacancy for Foreman on a Rail BUC Gang. This position was a Class A Foreman position on a

large gang consisting of 18 or more employees. The Claimant, who has a Foreman seniority date of September 30, 1980, submitted a bid for this position. Another employee, C. E. Hook, who had no seniority date as a Class A Foreman, was subsequently assigned to this position. The claim protests the assignment of the junior employee, contending the seniority rights of the Claimant were violated.

The Board's opinion that the controlling language in this case is Article II, Section 3 of the "Coal Line Agreement". Section 3 is specifically related to the question of seniority as a factor in Class A Foreman assignments. It states:

"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 of first consideration."

In view of the language, it is clear that seniority is not controlling. Therefore, the fact the Claimant has Class A seniority and Mr. Hook did not, is not controlling.

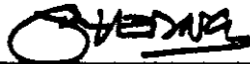
What is relevant under Section 3, is the relative qualification of the Claimant and Mr. Hook. More specifically, the critical question is whether the Carrier erred in assessing their respective qualifications.

The evidence fails to show that Mr. Hook's qualifications were less than or equal to the Claimant's qualifications. The Claimant, while a Class A Foreman, had not had experience with such a large group. He had worked on a tie gang consisting of 28 employees, while this gang had 70 employees. Moreover, Mr. Hook, even though he did not have Class A seniority at the time of the

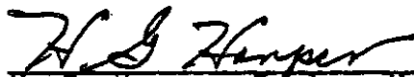
assignment previously had, prior to the time forfeited it, Class A seniority. Moreover, he had more than sufficient experience as a foreman. Mr. Hook had previously been assigned as the foreman on the 1982 BUC-Rail Gang, which had more than 70 employees. According to the Carrier, Mr. Hook performed his job as Foreman on this gang satisfactorily. He was also Assistant Foreman on this gang in 1981. This weighs heavily in concluding that the Carrier's determinations were not a violation of the agreement.

AWARD

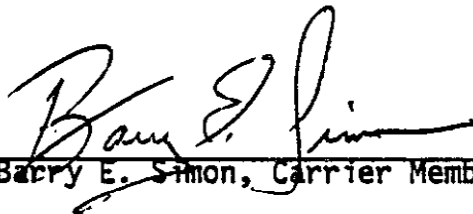
The claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated: 