

BEFORE PUBLIC LAW BOARD NO. 5027

Case No. 2

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI-KANSAS-
TEXAS RAILROAD)

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. Claim in behalf of Trackman T. D. Williams for the establishment of a seniority date of 2/27/89 in the Foreman's classification on the Consolidated System Roster No. 8900.

FINDINGS:

This claim involves the dispute between the Organization, on the Claimant's behalf, and the Carrier as to Claimant T. D. Williams' seniority date as it appears on the Carrier's seniority roster, specifically System Seniority Roster 8900. The Organization contends that a February 27, 1989, gang foreman seniority date should be added to the Claimant's records on System Seniority Roster 8900.

This claim arose in February 1989 after the Claimant was bypassed on promotion to a gang foreman position on Gang 8970, a system track surfacing gang. The Claimant discovered that solely because the Carrier's seniority roster reflected erroneous seniority and service dates, he did not receive the gang foreman position. The Organization contends that the Claimant was the senior applicant for said position, but the Carrier assigned junior employee D. L. Scott, Jr. to the foreman's position on Gang 8970 effective February 27, 1989. The Organization now

seeks to have the Claimant assigned a gang foreman seniority date of February 27, 1989, to the Carrier's System Seniority Roster 8900,

The Carrier takes the position that although some errors occurred as to the posting of the Claimant's previous service and seniority dates on its roster, the fact remains that the Claimant failed to protest those errors during the period the seniority rosters were open for correction during 1989 shortly after the Carrier acquired the former Missouri-Kansas-Texas (MKT) Railroad. The Claimant had established seniority on the MKT, and the Carrier began incorporating MKT's records into its new administrative system. The Carrier maintains that based on the seniority roster subsequent to the protest period, the senior employee was assigned to the position of gang foreman. The Carrier acknowledged and corrected some errors, but refused to add the February 27, 1989, gang foreman seniority date to the Claimant's records on its System Seniority Roster 8900 because the Claimant was not promoted to the gang foreman position. The Carrier maintains that promotions are made on ability and merit and then on seniority, and the Claimant did not possess the required qualifications to assume the supervisory duties involved in directing the operation of a surfacing gang. The Carrier contends that it cannot grant the seniority requested by the Claimant based on his date of service alone.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case and we find

that the Carrier violated the agreement when it failed to assign the Claimant to fill the position of foreman on Gang 8970. There is no dispute that the Claimant was the senior employee who submitted an application for the position of track foreman on Gang 8970. It was the Carrier's error that failed to show the Claimant's proper seniority date as track foreman on the System Seniority Roster that precluded his being awarded the position.

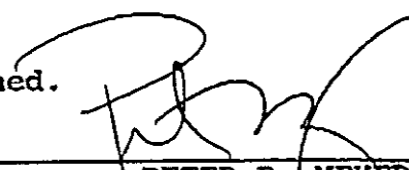
Rule 1 specifically states that promotions should be based on ability and seniority; ability being sufficient, seniority shall govern. The Claimant was the senior applicant and the Carrier assigned a junior employee to fill the position. There is no question that the Claimant had the ability to perform the job. The Carrier admits that the wrong seniority date for the Claimant was in the computer.


The record also reveals that the Claimant protested the seniority roster in a timely fashion.

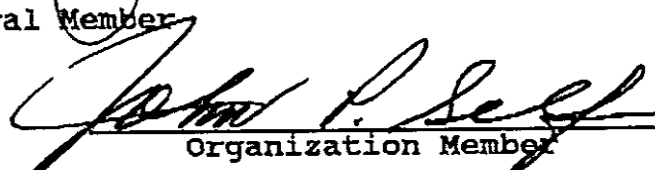
The record reveals that but for the Carrier's error in placing the seniority dates into the computer, the Claimant would have been awarded the position. The Organization has met its burden of proof in this case and, therefore, the claim must be sustained.

AWARD

Claim sustained.


 PETER R. MEYERS
 Neutral Member


 Carrier Member


 Organization Member

Dated: 2-24-92