

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 157
Case No. 244

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE St. Louis Southwestern Railway Company

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

1. Carrier violated the effective Agreement when Laborer B.J. Collins was not allowed to resume his regular job as Assistant Track Inspector when returning from sick leave October 15, 1979.
2. Claimant Collins shall now be paid the difference in the rate of pay of an Assistant Track Inspector and the rate of pay he is receiving as a Laborer beginning October 15, 1979, and continuous until such time he is placed on an Assistant Track Inspector position."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, with five years service with Carrier, had been assigned to the Assistant Track Inspector position in September of 1976. Claimant was on sick leave from November 16 1978 through October 14, 1979. While he was on sick leave, the position of the Assistant Track Inspector was filled by another employee. When Claimant returned he was not reappointed to the position but went back to his former position as an Extra Gang Laborer resulting in the claim involved herein. Upon Claimant's request a hearing was granted which was held on November 19, 1979. Subsequently Carrier notified Claimant that its position of not returning him to the position of Assistant Track Inspector was reaffirmed. Petitioner argues that Claimant was displaced in the position of Assistant Track Inspector by a junior employee. Furthermore, the record indicates that Claimant was a conscientious and well qualified employee as Assistant Track Inspector. The Organization

argues that the Agreement was violated when Claimant was not permitted to return to work as an Assistant Track Inspector upon being released by his physician on October 14, 1979.

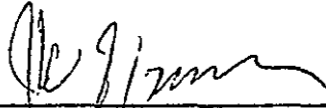
Carrier argues that Claimant was never disqualified nor was he discriminated against in any sense. However, Carrier points out the position of Track Inspector or Assistant Track Inspector are not positions covered by the seniority requirements of the Agreement. Those positions are neither bulletined nor are they filled by bid. Both jobs are appointed and Carrier picks what it considers to be the best qualified employee for the type of work in question. Carrier argues that its decision not to replace Claimant in his prior job as an Assistant Track Inspector was because Mr. Lock, his replacement, was better qualified. Carrier points out that the position of Assistant Track Inspector is covered by Addendum No. 6, Section 5 of the Memorandum Agreement between Carrier and the Organization which states as follows:

"Section 5. Employees selected and assigned to any position referred to herein shall not be subject to promotion, assignment in displacement rules, but in filling such positions preference shall be given to employees holding seniority rights in the Track Sub Department."

A review of the facts in this dispute indicates that there is no rule support for Petitioner's position. The Board can find no contractual basis for Claimant's assertion that he was to be reinstated in his position of Assistant Track Inspector upon his return from sick leave. It is clear that this position is exempt from the normal contractual rules with respect to promotion, seniority and prior rights. Thus, Carrier has the right to select an employee who it considers to be best qualified to handle the particular position involved regardless of seniority. While this Board must conclude that Claimant had no contractual right to the position, it notes that Carrier indicates that he is well qualified for the position of Assistant Track Inspector (and has not been disqualified) and further, that Carrier indicates that Claimant would be considered for future openings in the particular type of position.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1981
Houston, Texas