

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective Agreement when, instead of assigning B&B Foreman J. E. Valliere to the position of B&B Painter Foreman on Paint Gang No. 1961, Utah Division, advertised in Bulletin No. 47, it assigned the position to Mr. L. B. Jardine who holds no seniority rights on the territory covered by said bulletin.
- "(2) Mr. J. E. Valliere now be assigned to the position of B&B Painter Foreman on Paint Gang No. 1961.
- "(3) Mr. J. E. Valliere now be allowed pay at the B&B Painter Foreman's rate for the number of hours consumed each day by Mr. Jardine in filling the position referred to in Part (1) of this claim since January 14, 1958."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

Claimant Valliere in this case has held temporary assignments as Painter-Foreman, but he holds no seniority as a painter foreman or as painter or in the painter group, which in the instant contract is numbered Group 7, under the Bridge and Building sub-department. All of his seniority was in Group 6.

Jardine, who received the promotion to Painter-Foreman, held seniority in the painter group, Group 7, but not in the geographical district in which the vacancy existed.

Group 6 contains these classes:

- (a) Bridge and building foremen.
- (b) Asst. bridge and building foremen.  
Fence gang foremen and scale gang foremen.
- (c) Bridge and building masons.
- (d) Bridge and building carpenters.
- (e) Bridge and building carpenters and mason helpers.

Group 7 contains these classes:

- (a) Bridge and building painter foremen.
- (b) Asst. bridge and building painter foremen.
- (c) Bridge and building painters.
- (d) Bridge and building painter helpers.

The first sections of Rule 34 are brought into issue:

"(a) Promotion shall be based on ability, qualifications and capacity for greater responsibility and where these requirements are sufficient, seniority shall prevail.

"(b) Positions of foremen and supervisors will be filled by promotion of available qualified employees. Positions of foremen or supervisors, or other positions that are not filled through bulletining to employees in seniority class, will be filled from available qualified employees in the other classes of the seniority group.

and in the event not so filled

will be filled from available qualified employees in the other groups of the sub-department . . ." (Emphasis supplied)

Other provisions cited by the organization have no bearing on the issues before us.

The organization points out that seniority does not operate system-wide and insists that the procedure set forth in Rule 34(b) should have been exhausted within the Los Angeles to Salt Lake district before going out of this geographical district for assignment.

There is some dispute about the latter part of the above statement, but Rule 33 seems to substantiate this position.

The carrier, though, makes an issue of the qualifications of the claimant, Valliere, and states that the division officers responsible for the accomplishment of work objectives and selection of personnel did not consider the claimant qualified to fill the position and were therefore free to look elsewhere.

Our attention is directed to the last portion of Rule 34(b) which applies to positions of foremen and supervisors and which reads:

" . . . where ability and qualifications are sufficient, seniority shall prevail, the management to be the judge with respect to positions covered by this section."

The promotion provisions of Rule 34(b) are not the standard type of promotion rules. Rule 34(b) is a specific rule designed to cover foremen and supervisors. It specifically reserves to management an even greater measure of discretion than is accorded to management in passing upon the qualifications and ability of ordinary employees for promotion. The use of the language "management to be the judge" indicates an intention on the part of the parties that management's decision in regard to qualifications and ability must be given very great weight; otherwise the "management to be the judge" clause would be mere surplusage. Even though a mere unsupported conclusion by management (which is not the case here) that one employee has greater ability than another may not always suffice, in the light of the provision of this contract we must give very great weight to the bona fide judgment of the division officers in this case that the claimant was not considered qualified to fill the position.

The claim should be denied.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty  
Marion Beatty, Chairman

(s) A. J. Cunningham  
A. J. Cunningham, Organization Member

(s) A. D. Hanson  
A. D. Hanson, Carrier Member

Omaha, Nebraska  
November 21, 1960