

SPECIAL BOARD OF ADJUSTMENT No. 498

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and

GREAT NORTHERN RAILWAY COMPANY

AWARD IN DOCKET No. 1

STATEMENT

OF CLAIM: The claim in dispute has been identified by the Organization as follows:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it awarded and assigned the position of Shop Foreman at Lines East Maintenance of Way Work Equipment Shop to an applicant who is junior to G. F. Lundberg.

(2) The assignment of the Junior employe to the Shop Foreman's position be cancelled.

(3) Mr. G. F. Lundberg be assigned to the aforesaid Shop Foreman's position and be given seniority as such from June 1, 1960 (date of bulletin within which he should have been awarded this position.)

(4) Mr. G. F. Lundberg be reimbursed for the exact amount of monetary loss suffered because of the violations giving rise to this claim, with such reimbursement to be retroactively applicable to sixty (60) days from date of claim presentation of October 20, 1960 and to continue until the violations are corrected and discontinued."

FINDINGS: This claim involves the Carrier's exercise of judgment regarding the qualifications of claimant. This is a management function and can be challenged only if exercised arbitrarily or discriminatorily. The evidence does not permit such a finding but, in any event, the claim must be disposed of on the following basis:

The Carrier contends that the claim was not filed within the time limited therefor by Article V of the August 21, 1954 National Agreement, which requires that a claim be filed within 60 days from the date of the occurrence upon which it is based. The Organization contends that it was properly filed under the provisions of Section 3 of Article V, which refers to claims for alleged continuing violations of agreements.

This claim alleges a violation of the agreement by the Carrier when it awarded a Shop Foreman position to an applicant who was junior to the claimant on June 1, 1960. The claim was filed on October 20, 1960. The fact that there might be continuing monetary liability if such a violation were established, does not make this a claim for alleged continuing violation of the agreement comprehended by Section 3 of Article V. If any violation occurred, it was at the time the assignment was made and not at any other time.

Only claims of continuing violation, not claims of continuing liability after a specific occurrence, are subject to such Section 3. Thus it is apparent that this claim was not filed within the time limited by Section 1 (a) of Article V of the August 21, 1954 National Agreement, so it cannot be sustained.

AWARD: Claim denied.

(s) Dudley E. Whiting
Dudley E. Whiting, Referee

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

(s) Thomas C. DeButts
Thomas C. DeButts, Carrier Member

Dated at St. Paul, Minnesota,
this 27th day of June, 1963.