

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13031
Docket No. 12964
96-2-94-2-118

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 2-A-1, 2-A-3, 2-A-4, 3-A-1, and 3-B-1, and Skill Differential provisions of the July 31, 1992 National Agreement particularly Side Letter #16.
2. Accordingly, the claimant is entitled to the remedy as requested. Additional three (3) hours pay at the applicable straight time rate, skill differential payment of an additional fifty (50) cents per hour, and the difference between his regular rate of pay and the lead Machinist rate. This claim starts on February 2, 1993 and continues every day thereafter until settled. Plus, the Claimant be given the opportunity to qualify and/or train for the position in dispute in accordance with the Skill Differential provisions of the Agreement."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim of the Organization is that the Carrier violated the Agreement and Side Letter No. 16 in awarding Position No. 1398 to a junior Machinist rather than to Claimant. There is no dispute about the fact that the Claimant held greater seniority than the employee awarded the position.

The Board carefully read the record and finds this dispute similar in large part to the dispute decided in Second Division Award 13030. After full consideration the Board finds that the Claimant lacked the qualifications for the position. Side Letter No. 16 is controlling. The Claimant worked on the position prior to rebulletining by the Carrier, but this Board finds that "lead" positions require applicants to be qualified. If they are fully qualified, they must demonstrate those qualifications before the end of the bid period.

The Organization failed to provide probative evidence of Claimant's qualifications. The Carrier asserted that the position requirements were not met by the Claimant as per the list of Qualified Freight Car Air Brake Test Rack Operators. In fact, the Claimant had a prior opportunity to qualify and forfeited that opportunity. The Carrier also clearly refuted the assertion that the junior employee was trained after he bid and was awarded the position.

Accordingly, this Board finds no basis to interfere with the Carrier's decision. There is insufficient proof to find an Agreement violation.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.