

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13128
Docket No. 12963
97-2-94-2-116

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

(System Council No. 16
(International Brotherhood of Electrical Workers

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

“1. That in violation of the governing Agreement, the Soo Line/Canadian Pacific Railroad Company failed to award an Electrician position with respect seniority preference.

2. That accordingly, the Soo Line/Canadian Pacific Railroad Company be directed to assign Electrician Richard Kjera of Minneapolis, Minnesota to the position in dispute and that he be compensated at the rate of pay applicable to that position from the awarding of the position.”

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 were given due notice of hearing thereon.

On June 10, 1993, Carrier issued Bulletin Number 40 advertising an Electrician Maintainer (B&B) position. The Claimant applied, was interviewed on July 12, 1993, but was not awarded the position. The position was awarded to an Electrician with less seniority.

The Organization argues that the Carrier violated former Milwaukee Road Rules 13 and 70 and Soo Line Rules 15 and 1-EL among others. During the progression of this dispute the Organization asserted that the Claimant should have been provided an opportunity to prove his abilities and under Rule 15(1) should have been provided a reasonable trial period. Instead, the Carrier neither selected the most senior applicant for the position, nor provided a reasonable opportunity to qualify. The Organization introduced evidence suggesting that the junior applicant "had the inside track."

The Carrier argues that the Soo Line Agreement does not apply to this dispute and that none of the Milwaukee Rules were violated. The Carrier argues that the applicable Rules do not require the Carrier to select the most senior applicant or provide a trial period to qualify. Central to the Carrier's position is that the Claimant "did not have the necessary ability." The Carrier asserts that it followed past practice of awarding the position to the most qualified applicant.

This Board has sorted through all issues and evidence of record submitted by the parties in support of their respective positions. We have scrutinized this record and reach the conclusion that the Organization has failed to prove that the Carrier violated any Rule of the Agreement. In reaching that conclusion, the Board notes no rebuttal from the Organization that Rules 15 and 1-EL of the 1985 Soo Line Agreement were not applicable to this dispute. We further note that the Claimant applied, was interviewed and was not awarded the position because of alleged lack of qualifications. The Organization failed to provide sufficient probative evidence to demonstrate any Agreement right of the most senior applicant to the position. The Organization never provided adequate evidence of practice, nor that seniority, rather than qualifications governed.

The Bulletin states that "Qualifications and seniority to Govern." The Carrier stated that the Claimant was not the most qualified. The Organization never argued otherwise or refuted Claimant's alleged lack of qualifications with any evidence. The Organization came forth with no proof that the Claimant was qualified for the position and insufficient proof that the position was not a promotable position or that Carrier's

assignment was in error. Failing to find Rule language that was violated in these circumstances, the claim must be denied.

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 10th day of June 1997.