

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39860
Docket No. MW-38778
09-3-NRAB-00003-050157
(05-3-157)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and withheld Mr. D. Richards from his assigned position on Job No. 8762 on Gang TP12 beginning April 30, 2001 and continuing. [System File B-2760-8/12-01-0134(MW) BNR]**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Richards shall now “. . . be put back on his assigned position, job #8762, that any lost wages and all lost weekend travel allowance be paid to Mr. Richards and that Mr. Richards entitlement under Article XVI, Section 4 of the September 26, 1996 Mediation Agreement to the lump sum payment be reinstated, unbroken.”**

FINDINGS:

The Third 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.

The Claimant is a Welder Helper who bid to a position on job No. 8762 as part of a Regional Surface Gang. The bid closed on April 15, with a report date of April 23, 2001. The Claimant had requested to start the job prior to the report date and began to work the job on April 16, 2001. On April 23, Jacobs reported for job No. 8762. Jacobs was placed on the position. The Claimant remained on the job for another week and both men worked on the Gang. The Claimant then returned to his job as a Welder Helper.

The Organization notified the Carrier that the Claimant:

“Was assigned to job #8762, GP 3 on the TP 12. He reported to the job and was qualified on the Mark IV Tamper. [Claimant] states that he was notified by Manpower that the position was reassigned to a Mr. R. B. Jacobs and that he was to report back to his formerly held position on April 30, 2001 and that he would not be paid his return mileage.

It has come to the attention that irregularities occurred in the bidding process that leads this Organization to believe that [Claimant] should have remained on the position in question and that a reassignment should not have been made.”

In support of the claim, the Organization included a statement from the Claimant that the Assistant Foreman on TP 12 told him that the bid was sent in by the Assistant Foreman and not by R. B. Jacobs. Further, the bid was sent in a day

late and on the wrong bid sheet. Additionally, Jacobs acknowledged to the Claimant that he did not send in the bid sheet himself.

The Carrier counters that the Organization has not established a violation of the Agreement because the only support offered is a self-serving statement. There are no bid sheets, no bulletins and no support for the claim. The Claimant and Jacobs were both assigned to job No. 8762. The Claimant started a week early pursuant to the provisions of Rule 19A. When Jacobs reported, the Claimant was allowed to work the week and then returned to his Assistant Welder assignment. The Carrier contends that the Agreement was not violated because the senior qualified employee got the assignment.

The Board carefully reviewed the evidence. The Carrier contends that the Claimant and R. B. Jacobs bid to the same job. The Claimant was working a temporary assignment for one week prior to the report date. When R. B. Jacobs arrived, according to the Carrier, the mistake was discovered and the most senior employee was placed on the job. According to the Organization, there were discrepancies with the bid. The job was awarded to the Claimant and he should have remained in it.

It is axiomatic that the burden is on the Organization to establish a violation of the Agreement. Although the Board is sympathetic to the Claimant who thought he was awarded the job - only to discover that there was a mistake, sympathy is not evidence. The Carrier contends that a mistake was corrected. The Organization alleges discrepancies in the bid process, but offers no evidence beyond the Claimant's statement.

The evidence offered by the Organization is insufficient to establish a violation of the Agreement. The Organization has not met its burden. Accordingly, the claim is denied.

AWARD

Claim denied.

**Form 1
Page 4**

**Award No. 39860
Docket No. MW-38778
09-3-NRAB-00003-050157
(05-3-157)**

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 Third Division**

Dated at Chicago, Illinois, this 31st day of July 2009.