

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13030
Docket No. 12962
96-2-94-2-121

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, 3-B-1, 3-E-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 January 26, 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 Carrier issued Bulletin No. 428 for a Grade "A" Machinist. The Bulletin listed the duties as "Instruct, Lead and Direct Machinist in Repairs of Mechanical Plant Maintenance Equipment Within Grade "A" Work Classification." The Claimant bid the position. The Carrier awarded the position to an employee junior in seniority.

The Organization pursued this claim due to the fact that the Claimant was not only the senior applicant, but also had held a Grade "A" position for two years. The Organization's position is that the Carrier violated Rule 2-A-3(a) and Side Letter No. 16, paragraphs 3 and 4 by denying the Claimant the right to qualify and awarding the position to a lower rated Machinist Technician's position. Rule 2-A-3(a) states in part that employees obtaining positions "will be given full cooperation from supervisors... in their efforts to qualify." The Claimant was given no opportunity to train or qualify. The right to demonstrate his qualifications before the end of the bid period was contained in Side Letter No. 16. According to the Organization, the Carrier violated the Claimant's rights by not permitting the Claimant, who believed he was qualified to demonstrate his abilities prior to awarding the position to a junior employee.

The Carrier asserts that the Claimant was not qualified for the position. The Carrier argues that being unqualified, there was no obligation on its part to award the position on a seniority basis. In fact, Side Letter No. 16 specifically requires that the applicant be qualified or demonstrate his qualifications on his own time prior to the expiration of the bid period. This, the Claimant did not do. It is the Carrier's position that as the Claimant did not possess the necessary qualifications, he could not fulfill the duties required in Bulletin No. 428. The Carrier properly assigned the position to the junior employee who was qualified.

Central to this dispute is an interpretation of Side Letter No. 16, particularly, Sections 3 and 4. Those sections state:

"3. Employees seeking to qualify and train for work subject to a differential under this Article will qualify and train on own time for such work. Employees will be given reasonable cooperation from their superiors to do so.

4. An employee bidding on an assignment subject to a differential under this Article must be qualified, or demonstrate qualifications to carrier on own time, for such assignment before expiration of bid period."

The Organization firmly holds that Section 3 precedes Section 4 and requires the Carrier to aid the employee in training and qualifying for the position. The Carrier did not do so. The Carrier did not even let the Claimant know prior to the expiration of the bid period that his qualifications were questionable. As such, the Carrier failed to properly apply Section 4, by notifying the Claimant in a timely manner which would have permitted him to demonstrate his qualifications.

The Carrier argues that the Claimant was clearly unqualified. The intent of Side Letter No. 16 was to permit only qualified applicants to bid on a skill differential position. This dispute is a "lead" position paid the skill differential in accordance with the July 31, 1992 Agreement. Applicable thereto is Side Letter No. 16 which requires that only employees qualified for a skill differential position may bid. Carrier abided by the Agreement and no violation occurred.

The burden of proof lies with the Organization to demonstrate by probative evidence that the Claimant had any possibility of possessing some minimal qualification to justify a required demonstration. There is no evidence of record that Claimant ever requested his rights under Side Letter No. 16, Section 3. There is nothing in the record that he did so during the two years he occupied the Grade "A" Machinist position, or even at the time of this bid. Further, there is no proof that he was qualified.

The evidence of record is undisputed. The Organization asserted that the Claimant was "believed to possess the necessary qualifications." The Carrier called the Organization's statements "not definitive" and leaving "room for doubt." There was no rebuttal. Additionally, the Carrier noted that the Claimant worked his Grade "A" position alone in the Wheel Shop for two years, with no other employees. His sole responsibility was oiling and greasing machines, and the Superintendent noted that the Claimant "was on the verge of being disqualified." The Organization never rebuts the Carrier's assertions that the Claimant "on numerous occasions was not capable of performing the work in his area."

Under these circumstances, the claim must be denied. There is a lack of substantial evidence that this Claimant had any potentiality of demonstrating qualifications before the bid period ended. The duties were to "instruct, lead and direct," but there is no evidence that the Claimant had ever instructed, lead, or supervised anyone. There is no evidence he obtained any requisite skills in the "maintenance to other equipment or buildings." Since there is no dispute about the junior employee's skills and no evidence of any minimal qualifications or request to train or qualify, the claim must be denied.

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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.