

Award No. 16108
Docket No. MW-16208

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to assign the position of welder helper as advertised by System Bulletin No. 3398-A to Track Laborer Peter Batalis, who was the senior applicant for said position. (System Case No. TG-19-64 - VM-17-64.)

(2) Claimant Peter Batalis be awarded the position of welder helper, with a seniority date in that class as of the date of System Bulletin No. 3398-B.

(3) Claimant Batalis be reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority as a section (track) laborer within the Track Sub-Department as of June 19, 1951.

Under date of July 26, 1964, the Carrier issued Bulletin No. 3398 advertising a temporary Group 3 Track Sub-Department position of welder helper. Proper and timely applications for the aforesaid position were received from six (6) Group 1 Track Sub-Department employees (track laborers), including the claimant.

Despite the fact that the claimant held greater seniority than the other applicants, the Carrier failed and refused to assign him to the position, but assigned said position to junior Track Laborer Richard Gonzales (seniority date, May 1, 1964) by Bulletin No. 3398-B, which reads:

"No. 3398-B

Joliet, Illinois
August 14, 1964

“FAILURE TO QUALIFY

Rule 10. Employees awarded bulletined positions will be allowed sixty (60) calendar days in which to qualify for such position, and failing to do so will be so notified within seven (7) calendar days of the expiration of the sixty (60) day qualifying period at which time they will have the right to return to their former positions without loss of seniority.

* * * * *

(Exhibits not reproduced.)

OPINION OF BOARD: On July 26, 1964, the Carrier posted Bulletin No. 3398, advertising position of Welder Helper (Temporary). Bids were received from five employees, plus the claimant. Claimant was denied the position as “not qualified.” Carrier assigned the position to a junior Track Laborer.

Carrier’s Division Engineer declined the Organization’s claim on behalf of claimant. He stated that in the instant case, Mr. Batalis failed to attain a passing score when given the “Wonderlic Mental Ability Test”, therefore, it was determined that he did not have sufficient ability to be considered for promotion to the position of Welder Helper (Temporary).

This dispute is identical in principle with cases covered by our Awards 15002 (Zumas), 15586 (House), 15972 and 16107 (Mesigh), involving the same parties, rules, and, in substance, the same issue. Our findings in those Awards are dispositive of the issues in the instant dispute, and following the principle of Stare Decisis, we sustain the claim here.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1968.

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