

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION :

Award Number 21446

Docket Number MW-21418

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The Agreement was violated when an applicant junior in seniority to senior applicant R. W. Myers, Jr. was awarded the position of welder in Gang-No. 1 which had been advertised in Bulletin No. 53034 dated May 16, 1974 /System File 1-9 (22)/D-105493 E-306-21.

(2) Mr. R. W. Myers shall be awarded and assigned to the welder's position identified in (1) above and allowed pay at the welder's rate 'from May 30, 1974 to date placed on the position.'

OPINION OF BOARD: Claimant held seniority as a welder helper from January 25, 1973. On May 16, 1974 a position of welder in Welding Gang No. 1 was advertised. Both Claimant and a welder helper junior in seniority to Claimant bid for the position. The, junior welder helper was assigned the position.

About a week later Claimant was charged with failing to **meet** the qualifications of a welder helper, and a hearing was scheduled. At the conclusion of the hearing Carrier found that Claimant failed to meet the qualifications of welder helper and was given the option of exercising seniority as welder laborer at Carrier's plant at **Radnor** or forfeit seniority in accepting transfer to the track sub-department on the Louisville Division. **Claimant** opted to return to the track sub-department on the Louisville Division.

Prior to the hearing on **Claimant's** qualifications as a welder helper, claim **was** filed on his behalf for not being assigned the position of welder that was advertised on May 16, 1974.

The claim herein is limited to the question of whether Carrier violated the agreement by not assigning the position of welder to Claimant. As such we cannot consider the propriety of Carrier's determination **that Claimant** was not qualified as a welder helper.

Under the **rules** of the agreement including those provisions that specifically apply to welders, the Board finds that the determination of welder qualification is reserved to Carrier; and when Carrier determines that he is not qualified, the burden shifts to the Claimant to overcome Carrier's judgment of disqualification. There is no evidence in this record to show that Claimant was a qualified welder.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** 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

The Agreement **was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BO. AP. D
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

