

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22579
Docket Number MW-22425

Robert A. Franden, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Port Terminal **Railroad** Association

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

(1) The **Agreement** was violated when the bids of qualified and eligible applicants for the position of welder helper as advertised in **Bulletin No. 151**, dated February 15, 1977 were ignored and said position of welder helper was 'awarded' to an individual who held no seniority with this **Carrier** and who was thereby ineligible to bid for said position.

(2) Claimant G. H. Means shall be allowed the difference between the welder helper's rate of **pay and** the trackmen's rate of **pay** for eight hours on each work day and holiday falling within the period beginning with March 8, 1977 and **continuing until Bulletin No. 155** is cancelled **and Claimant** Means is assigned to the position of welder helper."

OPINION OF BOARD: The Carrier **advertised** by bulletin for the position of Welder Helper. The Claimant bid on the job but the Carrier elected to fill the position with a new hire. The **Claimant** takes the position that **the** Carrier denied him the position solely due to his **questionable** attendance record in January and **February** of that year. It is the Carrier's position that it exercised its prerogative to judge the ability, merit and fitness of the applicants as provided in Rule **g(a) and when doing so found the Claimant wanting.**

"RULE 9

PROMOTION

(A). In **filling** vacancies and new positions and making promotions, ability, merit, fitness and seniority shall be considered. Ability, merit, and fitness being sufficient, seniority shall prevail, the **Management** to be the judge.

"(B). Employees declining **promotion** shall not lose their seniority.

(C). Employees **promoted** and afterward **demoted** for failure to qualify **or** other causes **will** not lose their **accumulated** seniority in the grade to which **returned** and will be allowed to take former position if still vacant and unassigned, otherwise they will displace a junior employee **of their** class. Such employees **will** forfeit seniority in the classification from which demoted, if such seniority has been established."

The Carrier's letters of declination during the handling on the property indicate that **more** than Claimant's absenteeism **was** considered by the Carrier when weighing his qualifications for the position. All correspondence **from** the Carrier references the Claimant's lack of **qualification** for the **specific** work. The **handling** on the property demonstrates that the Carrier based its decision not to award Claimant the position on **more** than just his attendance record as **alleged**.

Absent a showing that the Carrier abused the discretion reserved to it under the rule we **will** not interfere with its decision. There has been no such showing in this case.

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

That the Agreement was **not** violated'.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, **Illinois**, this 30th **day** of October **1979**.