

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25827
Docket Number MW-25738

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company (Western Lines)

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

"(1) The Agreement was violated when the position of water service mechanic, as advertised by Bulletin No. 1-82 dated June 15, 1982, was awarded to an applicant junior to Class 'A' Mechanic T. J. Walsh (Carrier's File MofW 3-149).

(2) Claimant T. J. Walsh shall be allowed one hundred twenty (120) hours of pay at the water service mechanic's straight-time rate, eight (8) hours of holiday pay for July 4, 1982 and overtime pay equal to that paid to Mr. M. L. Briesemeister June 28, 1982 through July 16, 1982, in addition to any other compensation which might have been received by the claimant."

OPINION OF BOARD: Rule 26(A) of the Agreement, the Class and Wage Schedule establishes a wage rate for the classification of Water Service Mechanic. The Rule also footnotes a wage for "Water Service Mechanic (Welder)" as a "rate paid Water Service Mechanics for performing autogenous work", but does not establish or show an actual classification with that title.

On June 15, 1982, Carrier issued a bulletin which advertised the Position of "W/S Mechanic Welder" at a rate of pay of \$11.2182 per hour, the then applicable rate. At the time the rate for the Water Service Mechanic Classification was \$11.0526.

Claimant Walsh who has Water Service Mechanic seniority dating to August 16, 1974, submitted a timely application as did Water Service Mechanic Briesemeister, who has less seniority. Both Walsh and Briesemeister were on furlough when they bid. Briesemeister was assigned the position effective June 28, 1982. The position was abolished July 15, 1982.

The Organization contends there is no "Welder" class in the Water Service sub-department and therefore Claimant as senior applicant was entitled to the assignment. It argues the Rule provision regarding Welders constitutes a pay rate only and does not create a classification or effect seniority within the Water Service Mechanic classification.

In initial response to the Claim on October 8, 1982, the Carrier informed the District Chairman that extensive repair work required a qualified welder and that there were none in the current work force, so Briesemeister, a State Certified Welder and a Water Service Mechanic on furlough was assigned. Carrier further contended its representative discussed the bulletin with the District Chairman before it was issued and reached an understanding. The District Chairman denied this and the evidence does not establish any such "Agreement" or "understanding" was reached.

The Claim was discussed in conference on April 7, 1983. On April 7, 1983, the Carrier wrote the Organization asserting "Claimant is not qualified to perform necessary welding work as stated by Regional Engineer in his letter of denial . . ." Carrier noted Rule 7 provides in part:

" . . . promotions will be based on seniority. Fitness and ability being sufficient, seniority shall prevail."

This Board agrees with the Organization that the reference to, and establishment of, a pay rate for Welding does not create a Classification or Category of employee. Carrier argues "improper description of the vacancy" as advertised cannot be raised since "these issues were not included in Petitioners Statement of Claim". Contrary to the Carrier we note District Chairman Tie in his claiming letter of August 14, 1982, specifically alleged "Bulletin No. 1-82 dated June 15, 1982 . . . was not valid as there is no position of W/S Mechanic Welder" (Emphasis in original).

While agreeing with the Organization to the extent noted above this Board must deny the Claim. It is clear from numerous Awards of this Board that the Carrier has the right to establish qualifications necessary for a specific position. Although the Welder wage differential does not establish a separate classification it does show contractual Agreement that in certain instances welding may be required, and is to be compensated for. Here Carrier determined welding skills would be required for the specific assignment. It advertised that fact, albeit somewhat inartfully. There is no evidence that anyone was precluded from bidding based upon the wording of the bulletin and, of course, Claimant did apply.

As we have concluded the Organization is correct that no separate Welding Classification exists, and as Claimant was senior of the two in the classification covered by the bulletin, he was entitled to the assignment, but only if he possessed the qualifications required. The Organization argues Claimant has been a Water Service Mechanic for several years and therefore must be able to weld or at least be able to learn to weld. For several reasons that position is not persuasive. Factually, Claimant doesn't assert he has such ability -- in fact he initiated the Claim remarking "Ability to perform welding work is not a requirement for . . . Class 'A' mechanic positions".

Secondly, the rate differential suggests welding is not considered a routine part of the work of the classification, nor is there any evidence of record that Claimant ever did welding or ever received the differential. Finally, and most importantly, is the long line of cases in which this Board has held a Carrier's determination of an employee's fitness and qualifications will not be disturbed absent evidence of unreasonable, capricious or related type conduct by the Carrier. There is no evidence of that type here.

Accordingly the Claim must be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1986.