

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned junior employee C. W. Hansler instead of Mr. L. Bailey to a Welder Foreman position on Inter-Regional District No. 1 (System Docket CR-1184).

(2) As a consequence of the aforesaid violation, Mr. L. Bailey shall:

- '1. Mr. Bailey should receive the same award date as Mr. Hansler (Foreman/Welder).
2. Mr. Bailey should be compensated the difference in rate between his position and Mr. Hansler's, commencing April 30, 1984 and continuing until Mr. Bailey is rightfully awarded and working the position.'"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 Organization contends that Carrier improperly assigned a junior employee who held less seniority than Claimant to the position of Welder Foreman. According to the Organization, Claimant and the junior employee were both promoted to the Welder's Class on Inter-Regional Seniority District No. 1 on March 14, 1984. The junior employee was promoted from the Trackman's Class with a seniority date of April 25, 1977, in that Class, and Claimant was promoted from the Machine Operator's Class with a seniority date of May 12, 1975, in that Class. Thus, the Organization maintains, Claimant was entitled to be ranked ahead of the employee assigned on the Inter-Regional District No. 1 Welder's Seniority Roster in accordance with Rule 4, Section 1(b), which reads:

"(b) If two (2) or more employees acquire seniority in a higher class on the same day, their relative rank in the higher class shall be the same as in the class from which promoted. If promoted from different classes, they will be ranked in accordance with their earliest seniority dates."

The Organization asserted Claimant was senior to the employee assigned on Inter-Regional Seniority District No. 1, and by virtue of that seniority he was entitled to be ranked ahead of him on the Welder's Seniority Roster for Inter-Regional Seniority District No. 1. Therefore, when the Welder Foreman's position was advertised on District No. 1, the Claimant's superior standing in the Welder's classification entitled him to the position in preference to the junior employee.

Carrier denies that Claimant was senior. It points out that the Seniority Roster indicates that the employee assigned had Welder-Foreman seniority from March 14, 1984. As the roster indicates that the employee assigned had Welder Foreman seniority and Claimant did not, Carrier submits that the position was correctly awarded. Carrier emphasizes further that the burden of proof in this case was on the employees to show a violation of the applicable schedule agreement, and inasmuch as there is no factual support for the asserted violation, Carrier submits that the claim must be denied.

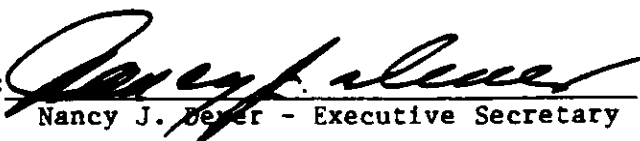
Carrier's position with respect to the deficiency of the claim is well taken. The key to this dispute are the facts with respect to the status of the employee assigned prior to April 30, 1984. Carrier insists that the roster shows that he has a Welder-Foreman seniority date of March 14, 1984. The Organization argues that Carrier is incorrect and that there is no evidence that the employee assigned ever bid for or was assigned a Welder-Foreman's position on the Inter-Regional Roster until April 30, 1984. However, a review of the record and the submissions before this Board does not contain sufficient probative evidence to support either Carrier's or Organization's position. Given this factual impasse, and the fact that the burden of proof was on the Organization, the Board has no alternative but to dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.