

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The Carrier violated the Agreement when it failed and refused to award the position of lubricator maintainer, as advertised by Advertisement No. 56 dated November 20, 1984, to Mr. J. P. Daugherty (System Docket CR-1388).

(2) Because of the aforesaid violation, Claimant J. P. Daugherty shall be permitted to demonstrate his qualifications to perform the duties of a lubricator maintainer. If successfully demonstrated, he shall be awarded the position of lubricator maintainer with seniority as such dating from December 17, 1984 and he shall be compensated for all time expended by others on the position referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claim before the Board centers upon the issue of whether Carrier violated the Agreement when it assigned the Lubricator Maintainer position to an employee junior to the Claimant. The Claim is focused upon Rule 3, Section 2 which states in pertinent part:

"In making application, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable practical demonstration of his qualifications to perform the duties of the position."

It is argued by the Organization that neither employee possessed seniority in the classification of Lubricator Maintainer. Claimant was clearly the senior applicant. The Organization asserts that his application for the position, in which he was clearly not qualified, must be viewed as a request to demonstrate his qualifications. This he was not permitted to do and the junior employee was awarded the position in violation of the Agreement.

It is the position of the Carrier that the Rule clearly requires two acts, an application for the position and a written request to demonstrate qualifications. The Claimant made no written request and the junior employee was qualified as a Lubricator Maintainer.

As a preliminary point, this Board finds no procedural violation and will not address issues and argument which were not raised on property.

Considering the case on merits, Rule 3, Section 2 is specific as to a "written request" which must be made in addition to the application for an advertised position. The record is clear on this point. The Claimant did not make a written request. Making application for the position does not necessitate or require the employee to give a practical demonstration of his qualifications. Should the employee choose to do so, the request must be in writing.


There is no denial in the record that the junior employee was qualified as a Lubricator Maintainer. There is no probative evidence of record that the Claimant was qualified. If he chose to demonstrate his qualifications, he had to make a written request as per the Rule (Third Division Award 26595). In the instant case, no Agreement violation can be found.

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 23rd day of November 1988.