

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railway Company
(former St. Louis-San Francisco Railway Company)

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

(1) The Agreement was violated when the position of First Class Carpenter advertised by Bulletin No. ED/B&B No. 1 dated January 10, 1985 was awarded to Mr. J. Vonnahme instead of Mr. W. D. Widener (System File B-2068/GMWC 85-5-21).

(2) Because of the aforesaid violation, Claimant W. D. Widener shall be allowed pay, at the First Class Carpenter's rate, for all time worked by Mr. J. Vonnahme 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 employee 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.

Claimant, a furloughed trackman, filed an application for a first class B&B carpenter position, which had been advertised by bulletin. Claimant did not have seniority in the B&B Sub-Department. The Carrier awarded the job to a furloughed B&B employee from another seniority district.

Both parties rely upon Rule 33, which reads:

"Rule 33. Ability, Merit and Seniority to
Govern Promotions

Promotions shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail; the management to be the judge."

The Carrier denied the claim, asserting that Claimant was not qualified for the job. This position was taken at the first level of appeal and reaffirmed by the Carrier at each stage of the grievance process. No argument was made to the contrary by the Organization until the General Chairman's letter of April 16, 1986, to which was attached a handwritten letter from Claimant outlining his education and experience as a carpenter. Claimant's letter is, apparently, in response to an April 8, 1986, request from the General Chairman. The Carrier received this letter on April 17, 1986, the same day the Organization filed its Notice of Intent with this Division. In its submission, the Organization noted the Carrier never responded to the Claimant's letter.

Rule 33 makes it clear the Carrier is the judge of an applicant's ability and merit. The Organization has the burden of showing Claimant was qualified and that the Carrier acted in an arbitrary and unreasonable manner. The only evidence of Claimant's qualifications proffered by the Organization is his letter. Coming as late as it did in the handling of the dispute on the property, which denied the Carrier an opportunity to respond to it while the record was still open, the letter should not be given any substantial weight. Accordingly, we conclude the Carrier acted within its rights in not awarding Claimant the carpenter position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.