

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30006
Docket No. MW-29513
94-3-90-3-446

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned junior employee D. R. Cole instead of C. L. Bohannon to a welder helper position on Gang 1156 working in the vicinity of Pine Bluff, Arkansas beginning July 28, 1989 (Carrier's File 890684 MPR).
- (2) The claim* as presented by Assistant General Chairman G. L. Barker on August 8, 1989 to Superintendent R. G. Lang shall be allowed as presented because Superintendent Lang failed to notify Mr. Barker of the reasons for disallowing the claim in accordance with Rule 12.2(a).
- (3) As a consequence of the violations in Parts (1) and/or (2) above:
 - (a) Mr. C. L. Bohannon shall be afforded an appropriate seniority date as a welder helper and he shall be placed immediately ahead of Mr. D. R. Cole on the welder helper seniority roster.
 - (b) Mr. C. L. Bohannon shall be paid the difference between what he earned exercising his seniority as a trackman and what Mr. D. R. Cole earned exercising his seniority as a welder helper beginning July 28, 1989 and continuing until such time as Mr. Bohannon is placed on the welder helper seniority roster above Mr. Cole and allowed to exercise his welder helper seniority.

*The letter of claim will be reproduced within our initial submission."

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.

In response to a Claim concerning the selection of an employee junior to the Claimant for the position of Welder Helper, the Carrier replied in full as follows:

"Reference your letter of August 8, 1989, presenting a time claim by and in behalf of Trackman C. L. Bohannon, SSN 430-27-0273, wherein you allege that per assignment EDW00011, junior Trackman D. R. Cole was assigned as a Welder Helper on Gang 1156, working on line in the vicinity of Pine Bluff, Arkansas.

You contend that Trackman Bohannon should have been assigned since he had been filling the temporary vacancy, although Welding Supervisor Scates had qualified Mr. Cole in August, 1988.

You also contend that certain rules of your current Working Agreement have been violated, especially, Seniority Datum Rule (1), Seniority Rights Rule (2), and Promotion Rule (10).

Based on the above, your claim for the difference in rate of pay from Trackman to Welder Helper from July 28, 1989, to continue thereafter until such time that claimant is assigned to the position and placed on the seniority roster above Mr. Cole as Welder Helper is respectfully declined in its entirety."

The Organization argues that the Claim should be sustained as presented, based on the Carrier's failure to provide a "reason" for

the disallowance, as required in Rule 12.2(a), which states in pertinent part as follows:

"Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented,..."

The Board finds that the Carrier minimally met the requirement to provide a "reason" for his disallowance of the Claim. He referred to the qualification of the junior employee and noted the Rules cited by the Organization. While this is barely adequate, there is insufficient basis to require the Claim to be allowed without discussion of the merits.

As to the merits, the Claimant had been utilized as a Welder Helper and had other welding experience. The record makes it clear that the Claimant was not passed over for being unqualified but rather because the Carrier found the junior employee more qualified. Third Division Award 29022 involved the same parties concerning a closely similar situation. Award 29022 stated:

"The Carrier defends its position by contending that the junior employee had superior qualifications and that it exercised its right to select on this basis.

The Board finds that the Carrier reads too much into Rule 10(a). That Rule calls for the application of seniority where ability and merit are 'sufficient.' It does not give specific preference to a judgment as to relative 'ability and merit.' Nothing was shown on the record to indicate that the Claimant, as an experienced Welder Helper, had insufficient ability and merit to bar him from the position.

What is not known is whether or not the Claimant, if selected, would in fact have qualified for the Welder position after selection. The Award will provide, therefore, that the Claimant shall be paid the difference in pay between that he would have received as Welder, if selected, and the pay he actually received.

This shall apply until he is placed on the position in question or until that position was abolished, whichever occurs first. The Claim for granting of Welder seniority is not sustained, since this would be subject to the Claimant's actual placement in and qualification for the position."

The Board reaches the same conclusion here. The Claimant shall receive the difference in pay between that he would have received as Welder Helper, if he had been selected, and the pay he actually received. This shall apply until he was, as reported, selected for another Welder Helper vacancy. For the reason stated in Award 29022, the Claim for granting of retroactive Welder Helper seniority is not sustained.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.