

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30531
Docket No. MW-30112
94-3-91-3-540

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
(
(National Railroad Passenger Corporation
((Amtrak)

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

- (1) The Agreement was violated when the Carrier awarded the position of welder, advertised by Bulletin No. Engr-04-8A-90-BMWE M-102, to junior Trackman T. M. Stoneberg instead of Mr. R. Pena (System File BMWE-TC-138 NRP).
- (2) The Agreement was violated when the Carrier failed to award the position of welder, advertised by Bulletin No. Engr-03-1A-90-BMWE under date of March 1, 1990, to Mr. R. Pena (System File BMWE-TC-137).
- (3) The Agreement was violated when the Carrier awarded the position of welder, advertised by Bulletin No. Engr-03-1A-90-BMWE, to junior Trackman G. B. Avila instead of assigning Mr. R. Pena thereto and allowed Mr. Avila to fill the welder's position on April 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1990 (System File BMWE-TC-134).
- (4) As a consequence of the violation referred to in Part (1) above, Mr. R. Pena shall be awarded the position as welder and be given time to demonstrate his ability in accordance with the Agreement and he shall be paid the difference between the trackman's rate of pay and the welder's rate of pay, including all straight time and overtime worked by junior employee T. M. Stoneberg on April 27, 30, May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1990.

- (5) As a consequence of the violation referred to in Part (2) above, Mr. R. Pena shall be paid the difference between the trackman's rate of pay and the welder's rate of pay, including all straight time and overtime worked by junior employee G. B. Avila on March 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, April 2, 3, 4, 5 and 6, 1990.
- (6) As a consequence of the violation referred to in Part (3) above, Mr. R. Pena shall be paid the difference between the trackman's rate of pay and the welder's rate of pay, including all straight time and overtime worked by junior employee G. B. Avila on April 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1990."

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.

On March 1, 1990, the Carrier bulletined a position as Welder M/W. A notice was posted on March 9 that "no qualified bids" were received. The position was bulletined again on March 9, and a Trackman with less seniority than the Claimant, was awarded the position.

On April 18, 1990, another Welder position was bulletined, and it was assigned to a Trackman with less seniority than the Claimant.

The Organization argues that the Claimant, as senior bidder, should have been awarded either of the two Welder positions. The

Organization points to the Claimant's past welding experience in the "automobile repair business." More significantly, the Organization relies on Rules C and E, which read in pertinent part as follows:

"Rule C. SENIORITY

4. Assignment to positions covered by this Interim Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern.

Rule E. BULLETIN. ASSIGNMENT AND DISPLACEMENT

1. ...Employees desiring bulletined positions must file written application with the Carrier official signatory to the bulletin within seven (7) days after the bulletin is posted and positions will be awarded to the senior qualified applicant...

2. An employee, after being awarded a bulletined position or permitted to exercise displacement rights, will be allowed thirty (30) calendar days in which to demonstrate his ability to competently perform the job."

The Carrier argues that an examination of the Claimant's past experience does not indicate that he held the basic skills involved in the type of welding required in the bulletined position. The record also shows, without contradiction, that the Claimant was afforded an opportunity to "demonstrate his [existing] ability and qualification" and "failed to demonstrate even the most fundamental skill."

The Board finds that the Carrier acted within its prerogative to determine that the Claimant did not have the welding experience and ability (i.e., qualification) to be considered for a position requiring that the candidates be "qualified." The less senior employees awarded the positions were found to have such qualification, and thus were permitted to fill the positions.

As found in many previous Awards, the 30-day period provided in Rule E.2. applies to a time period to accommodate to the requirements of the particular position. It does not speak to the basic qualifications which may be required in a position. Rule E.1 refers to awarding a position to the senior "qualified" applicant, indicating the Carrier's right to determine if an applicant has the basic skill and ability required for consideration for the position.

Obviously, the Carrier may not apply its determination of basic qualification in an arbitrary or unreasonable manner. Here, however, the Board cannot dispute the Carrier's contention that the Claimant simply did not have the necessary background in various types of welding and that he reasonably could not acquire such in 30 days.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.