

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30604
Docket No. MW-30259
94-3-91-3-727

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 an E/A Welder Helper position (Advertisement No. 012-WIL-0290) to junior employe W. Colanzi instead of Mr. Q. Nguyen. (System File NEC-BMWE-SD-2759 AMT).
- (2) As a consequence of the aforesaid violation, Mr. Q. Nguyen shall be allowed "...a seniority date to reflect the original date of the award; and all monies lost by Mr. Nguyen caused by and due to the incorrect award."

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.

At the time this dispute arose, Claimant was assigned as a Trackman. On March 19, 1990 Carrier awarded an Electric Arc (E/A) Welder Helper position bulletined in Advertisement No. 012-WIL-0290 to a junior employee. By letter of April 12, 1990, the Organization protested the award, alleging that Claimant was the senior employee, and was, therefore, entitled to the position. In that claim the Organization cited Rules 3, 10, and 17. Carrier denied the claim, stating in part that since neither employee possessed seniority on the E/A Welder Helper Seniority Roster, the order of preference went to the employee with the earliest Welder Helper seniority. Carrier further pointed out that the junior employee possessed an O/A (oxyacetylene) Welder Helper seniority date of April 2, 1984, while Claimant was a rostered Thermite Welder with a seniority date of October 31, 1988.

The claim was then appealed through the usual channels, up to and including the highest Carrier officer authorized to handle such matters. During that processing, Carrier also noted that the Rules cited by the Organization were inapplicable to the instant claim and, notwithstanding, had not been violated.

A careful review of the record before the Board indicates that the instant claim is without merit. The Rules cited by the Organization do not, in fact, bear any relevance to the dispute at issue. Moreover, it is uncontroverted on the record that Claimant did not have an earlier seniority date as a Welder Helper than did the employee awarded the position. Accordingly, he was not entitled to the position in question. In light of the foregoing, the instant claim must be denied.

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 2nd day of December 1994.