

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31075
Docket No. MW-30635
95-3-92-3-416

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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

(1) The Agreement was violated when a vehicle operator position, Inter-Regional Bridge Gang BG-1, was advertised within Bulletin BG-1-90-3, which closed on October 15, 1990, was not canceled and the Carrier failed to award the position as required by Rule 3(d) (System Docket MW-1843).

(2) As a consequence of the violation referred to in Part (1) above, Mr. R. R. Henry, who entered a bid for said position, shall be awarded the position, seniority on the inter-regional roster and compensated at the vehicle operator's rate of pay for all wage loss suffered as a result thereof."

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 R. R. Henry held seniority as a vehicle operator within the Carrier's Pittsburgh Division.

On October 8, 1990, the Carrier issued a notice advertising an open position for an A-1 vehicle operator on Inter-Regional Bridge Gang BG-1. This position was advertised because the Carrier could not find a qualified candidate. The Claimant bid on the position even though he did not hold seniority on the Inter-Regional Seniority District #2 roster. The Carrier, however, assigned the position to a B&B crane operator.

The Organization filed a claim on behalf of the Claimant arguing that the Claimant had a right to apply for the position in accordance with Rule 3, Section 3(a). It further contended that "although the Claimant did not hold seniority on the Inter-regional Seniority District #2 roster, such would not prevent him from being assigned in the event an employee who held seniority thereon failed to make application thereto." Furthermore, the Organization argued that the B&B operator that was finally assigned by the Carrier to the position, "did not make an application to the position".

The Carrier denied the claim contending that the Claimant "held no seniority on the Inter-Regional roster as prescribed in Rule 3 Section 1 of the current Agreement".

After further discussions and an appeal, the Carrier denied the claim adding that the Claimant was employed on the claim date and, therefore, suffered no loss.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it failed to select the Claimant for the position that was advertised in the Bulletin. The record reveals that the Claimant failed to hold seniority on the Inter-Regional District #2 Roster which was a requirement for being eligible for the posted position. In Rule 3, it states in Section 1 that, "In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern." Seniority is then defined as, "...seniority in the class in which the assignment is to be made..." It is undisputed that the Claimant in this case had no seniority on the Inter-Regional roster. Consequently, he had no right to be awarded the position.

This Board recognizes that the Carrier first advertised the position by Bulletin and then did not cancel it, and failed to award it. This Board also realizes that the Bulletin requires an award be made within seven days. However, the key to this case is that the Carrier need not accept a bidder who does not hold the proper seniority. In this case, the Claimant did not hold the appropriate seniority for the particular assignment.

It is clear that if there is no successful applicant, the Carrier need not place anyone in the position. This Board agrees with the Carrier when it argues that Section 3(d) is not intended to require that the Carrier fill the position even when an employee without the appropriate seniority bids on it.

The Organization bears the burden of proof in this case. Since the Organization has not met that burden, the 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 1st day of September 1995.