

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31425
Docket No. MW-32022
96-3-94-3-382

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

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

- (1) The Agreement was violated when a vehicle operator log loader position on the Allegheny "A" Seniority District was advertised within Advertisement No. 168 and the Carrier failed to award the position as required by Rule 3 (d), (System Docket MW-2964).
- (2) As a consequence of the violation referred to in Part (1) above, M. B. J. Lichvar, who entered a bid for said position, shall be placed on the Allegheny "A" Vehicle Operator Roster with a seniority date of December 14, 1992."

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.

Bulletin No. 168 advertised a vehicle operator - log loader position as being open for bids. On December 7, 1992, Claimant sent a two page fax to the official whose name appeared on the bulletin. The first page was the standard application for position, Carrier Form CT-88, and the second page was a copy of Claimant's MD-33 Card, Commercial Driver's License, and Conrail Certification Card, indicating his qualifications for the job. Carrier claims that it only received the first page, and posted the job as "no qualified bidders." The Organization filed a claim protesting the bulletin.

In denying the claim, Carrier did not contend that Claimant was not qualified for the vacancy, but argued that he had not submitted documentation of his qualifications with his CT-88 application. Claimant submitted evidence that he filed a two page fax when he was making application, the CT-88 and the attachment documenting his qualifications.

The Board is persuaded that Claimant submitted documentation of his qualifications at the time he submitted his bid. It has not been explained why the 2nd page of the fax was not in the file when the assignment was being made. When Claimant's CT-88 was received, by Carrier, prudent conduct would have dictated that at least cursory inquire be made as to whether or not an attachment containing qualifications was received. That it was not requires that doubt be resolved in Claimant's favor. His claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of March 1996.