

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Form 1

Award No. 31553
Docket No. MW-32176
96-3-94-3-604

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 the Carrier awarded MO 1 Jimbo and Welder Orgotherm positions, advertised in Bulletin No. 259, to junior employees instead of Mr. F.L. Bardo (System Docket MW-3106).
- (2) As a consequence of the violation referred to in Part (1) above:

'Mr. Bardo should be placed on the Allegheny "B" Welder's Roster with a Welder's seniority date of 8/30/93 or Mr. Bardo should be credited with qualification on the MO 1 Jimbo or both. Mr. Bardo should be paid the difference in rates he received since August 30, 1993, and the MO 1 rate from the same August 30, 1993 date until October 4, 1993 (this being the date a senior MO 1 operator would have displaced Mr. Bardo.)"

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.

This case arises because the Carrier did not award a Machine Operator Class 1 position ("Jimbo Crane Operator") to the Claimant.

Rule 3, Section 2 is mainly applicable to this case. It reads as follows:

"RULE 3, SECTION 2"

Section 2. Qualifications for positions.

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, or may be required, on written request, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

Rule 3 has been construed by a number of decisional authorities (see, for example, Third Division Award 27631; Special Board of Adjustment No. 1016, Award 59 and Public Law Board No. 3781, Award 14. These Awards have held that, to meet the requirements of Rule 3, Section 2, the applicant must make a specific "written Request" which must be made in addition to the application for an advertised position.

From our review of the on-the-property record, the Carrier made a decision, pursuant to Rule 3, Section 1, that the Claimant was not qualified for the position. At that point, one avenue for the Claimant to pursue was that provided by Section 2, Rule 3. The record on the property shows that he failed to do so. Accordingly, as noted in Special Board of Adjustment No. 1016, Award 59 cited above, this Board is compelled to follow decisions that have addressed and settled the same issue.

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 25th day of July 1996.