

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31621
Docket No. MW-31175
96-3-93-3-177**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier awarded a Class 3 Machine Operator's position (Position No. 5356-2 Scrap Picker) to junior employe R. A. Simpson instead of Mr. D. B. Novak (System Docket MW-2378).

2. As a consequence of the violation referred to in Part (1) above, the Carrier shall:

... compensate Mr. Novak the difference between trackman's rate and M. O. 3. Mr. Novak should also be paid mileage at the current rate from his home to his current workplace until such time as he is furloughed, and then he should be paid mileage from his home to the location of R. A. Simpson's M. O. 3 position, i.e. the instant protest. If Mr. Novak should be furloughed before Mr. Simpson, Mr. Novak should be paid all time worked by Mr. Simpson. Mr. Novak should be placed on the Allegheny "B" M.O.3 Roster."

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.

The instant claim challenges Carrier's award of a Machine Operator 3 position for a scrap picker to an employee who had less seniority than the Claimant. The Organization contends that Carrier failed to justify its award of the position to the junior bidder in violation of Rule 3. Carrier contends that it complied with Rule 3 and awarded the position to the senior qualified applicant. Carrier argues that the Organization offered no evidence that Claimant was qualified for the job and that Claimant never requested the opportunity to demonstrate his qualifications.

Rule 3 provides:

"Section 1. Assignment to position.

In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern.

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, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position. . . ."

As moving party in this claim, the Organization has the burden of proof. Although it is undisputed that Claimant was the more senior employee, our review of the record discloses no evidence that Claimant was qualified for the position. Furthermore, there is no evidence that Claimant requested to demonstrate his qualifications, in accordance with Rule 3. Accordingly, the claim must be denied for lack of proof.

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 29th day of August 1996.