

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32880
Docket No. MS-32491
98-3-95-3-390

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

(Ronnie L. Boyd
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Re: System File B-2303-2/MWC 94-06-27AA/Chicago 63-45

This file contains the claim of unjust treatment and discrimination of Ronnie Boyd, an employee of sixteen years with the Bridge and Buildings Department of the Burlington Northern Railroad. Mr. Boyd has accused Burlington Northern Railroad of minimizing his ability to perform his job and the sixteen years of service with the railroad. In return for his dedication, he was denied promotions on three (3) different occasions for 3 different jobs. Mr. Boyd feels that he has been a victim of job discrimination. There has also been several occasions when verbal abuse was an issue, where Mr. Boyd was subjected to such racial slurs as 'Nigger and Jungle Bunny' by his foreman, Terry Burkey and several of the other employees. Mr. Burkey also prevented Mr. Boyd from getting a promotion to truck driver on his Gang. Mr. Burkey was quoted as saying that he didn't want a 'Nigger' on his gang."

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 were given due notice of hearing thereon.

At the time of the matter complained of, Claimant was a Carpenter in Carrier's B&B Sub-Department. He, along with 29 other employees, bid on a Mechanic-Welder position posted on November 16, 1993. Carrier determined that none of the applicants were qualified, since none possessed the Certified Structural Welder qualification. The position was rebulletined on November 30, 1993, and Claimant again bid on it. Carrier awarded the position to another employee who was junior to Claimant, but had 20 years experience as a Structural Welder and had passed Carrier's Welding Qualification test. A protest of this award on behalf of Claimant led to the holding of an unjust treatment Hearing on March 31, 1994.

At this Hearing, Claimant admitted that he was not a qualified Welder nor had he requested or passed a qualification test at the time of his bid. He protested Carrier's failure to send him to welding school despite prior verbal requests for such an opportunity. The record reveals that while Claimant may have made several verbal requests of his Foreman to attend welding school, the Carrier's policy is that such requests must be made in writing. Claimant's first written request was made on July 12, 1993, which resulted in his enrolment in the first available opening at Carrier's welding school. Claimant had completed one of the three courses required at the time of the Unjust Treatment Hearing.

Rule 23 of the parties' January 1, 1984 Agreement states, in pertinent part:

"The classification of Mechanic-Welder in the Regional Bridge and Building Subdepartment is established in accordance with the following:

(a) To be qualified for assignment as Mechanic-Welder, an employee must satisfactorily pass Carrier's pre-qualification welding test for structural welders. An employee desiring to take pre-qualification welding test must make written application to his immediate supervisor, and seniority will govern in selecting those to whom the test will be given. . . ."

In his Submission to the Board, Claimant included a few unsigned and undated transcriptions of employee statements, and one signed statement, which alleges that Claimant was the subject of certain racial slurs by a Foreman. These matters were not brought up at the Unjust Treatment Hearing and Carrier objects to the Board considering them since they were not discussed by the parties on the property and should

have been made part of that Hearing, if appropriate, citing Third Division Award 16348. While the Board takes allegations of discrimination very seriously, and does not condone the use of inappropriate language, this aspect of the claim appears to be very different from the unjust treatment matter handled by the parties on the property, and was clearly not subject to the type of Investigation that should have occurred had the matter been brought up at the March 31, 1994 Hearing. Under such circumstances, the Board cannot rely upon these allegations in reviewing the matter before us.

With respect to the denial of the Mechanic-Welder position to Claimant in November 1993, the record clearly reveals that Claimant did not possess the necessary qualifications for the position at the time, and that the junior employee awarded the job met the requirements set forth in Rule 23. Further, it appears that Carrier properly responded to Claimant's written request to be permitted to attend welding school by enrolling him in that program at the first available opportunity. The fact that any prior verbal requests may not have had the same result cannot be found to be discriminatory on this record.

Accordingly, 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 21st day of October 1998.