

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33224
Docket No. MW-32142
99-3-94-3-444**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier, within Bulletin KIV995, advertised a B&B carpenter position and failed to award same to Carpenter Helper F. Zamora who timely and properly submitted a bid for said position and was thereby deprived of an opportunity to qualify therefor (Carrier’s File 930606 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. Zamora shall be compensated for:**

‘ . . . the difference in rate of pay and any time lost as a result of not being assigned as B&B Carpenter beginning April 26, 1993. Claim to further include seniority of April 26, 1993, as a Carpenter.’”

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.

F. Zamora (Claimant) established and holds seniority as a Helper in the Bridge and Building (B&B) Subdepartment, and was working as such at the time of this dispute.

In April 1993, Carrier advertised, under Bulletin #KIV995, four B&B Mechanic vacancies on Gang 3005 at Bay City, Texas. On April 22, 1993, Claimant applied for one of the positions. However, on April 26, 1993, Carrier canceled all four positions due to "no qualified bidders."

On June 25, 1993, the General Chairman apprised Carrier that:

"Time is being claimed on behalf of Felipe Zamora for the difference in rate of pay and any time lost as a result of not being assigned as B&B Carpenter beginning April 26, 1993, as a Carpenter.

Claimant a B&B helper, bid on Bulletin KIV995 for a B&B Carpenter. When the assignments came out on April 26, 1993, this bulletin was cancelled account no qualified bidders. Although Mr. Zamora had not already established Carpenter's rights, he was the oldest helper on the Kingsville Division and should have been afforded the opportunity to qualify as Carpenter.

We contend that rules of our agreements have been violated, especially Rules 1, 2, 10 and 11 of our current working agreement."

Carrier denied the claim, maintaining that on May 6, 1991, Claimant was disqualified as a Carpenter, and therefore, Carrier did not receive bids from any qualified personnel for Bulletin KIV995. According to Carrier, Claimant was treated "well within" the guidelines of the Agreement. Carrier pointed specifically to Rule 10(a) which stipulates that:

“Promotions shall be based on the ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail, management to be the judge subject to appeal.”

The General Chairman responded, contending that Claimant's disqualification of some two years ago should have “absolutely no bearing” on his right to the promotion in dispute. The General Chairman went on to note that Carrier had selectively quoted the portion of Rule 10 to “fit its own interpretation,” pointing instead to paragraph (d) of Rule 10 which provides:

“Employees accepting promotions and failing to qualify within thirty (30) days, may return to their former position without loss of seniority.”

The General Chairman pointed out that Carrier did not know if Claimant was qualified for the Carpenter position because he was not given the opportunity to prove himself “as seniority provides.”

In the meantime, during October 1993, Carrier re-advertised B&B Mechanic vacancies under Bulletin #KIV01065. Claimant applied for one of those vacancies and although he had not had any substantially greater experience in October than he had a few months earlier, Carrier awarded him the position, effective October 15, 1993. There is no dispute that Claimant worked as a B&B Helper for a number of years. The duties encompassed in that position are to assist the B&B Carpenter and to participate in on-the-job training under the guidance of qualified Carpenters. Evidently, Carrier recognized in October 1993, but not in April 1993, that a disqualification several years earlier was now irrelevant.

Carrier advertised four B&B Carpenter positions in Bulletin #KIV995. Although Carrier received Claimant's bid for one of the positions, it failed to award Claimant the position due to his “lack of qualifications.” Six months later, with no appreciable change in Claimant's qualifications, Carrier found him qualified and awarded him the position. The Organization persuasively demonstrated that Carrier's actions deprived Claimant of more than six months of B&B Carpenter seniority. If he was qualified in October he was at least sufficiently qualified in April, when he first bid for the position, to be given the opportunity contemplated by Rule 10 (d), supra.

We concur with the Organization's conclusion that Claimant is entitled to a B&B Carpenter seniority date of April 26, 1993 and the difference between the B&B Carpenter rate and the Helper rate from that date until October 15, 1993.

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 April 1999.