

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34991
Docket No. MW-31041
00-3-92-3-918**

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

**(Brotherhood of Maintenance of Way Employes
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 failed and refused to list Mr. R. Zerfuss ahead of Mr. C. Hansler on the 1991 Philadelphia (New Jersey) Divisional Structural Welder Seniority Roster in compliance with Section 1(b) of Rule 4 (System Docket MW-2240).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. Zerfuss shall be listed on the Philadelphia (New Jersey) Divisional Structural Welder Seniority Roster ahead of Mr. C. Hansler.”**

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.

This case involves a claim by the Organization that the Carrier improperly failed to list the Claimant ahead of C. Hansler on the Structural Welding Roster published and released on March 1, 1991. Both the Claimant and Mr. Hansler were assigned to

Structural Welder positions in the Bridge and Building (“B&B”) Department on July 18, 1990. According to the Organization, the Claimant should have been listed ahead of Mr. Hansler on the Structural Welding Seniority Roster in accordance with Rule 4, Section 1(b), which reads as follows:

“RULE 4 - SENIORITY

Section 1. Seniority date.

* * *

(b) If two (2) or more employees acquire seniority in a higher class on the same day, their relative rank in the higher class shall be the same as in the class from which promoted. If promoted from different classes, they will be ranked in accordance with their earliest seniority dates.”

The Organization asserts that the Claimant and Mr. Hansier were previously assigned as B&B mechanics. It argues that because they were promoted to Structural Welder positions from the same class, under Rule 4, Section 1(b), their relative rank on the Structural Welding Roster should have been the same as it is on the B&B Mechanic Roster. The Claimant possesses greater seniority on that roster.

The Carrier, on the other hand, asserts that Rule 4, Section 1(b) does not apply to the instant case. The Carrier asserts that Rule 4, Section 1(b) only applies where employees acquire seniority “in a higher class’ on the same roster.” Here, the Carrier argues, the Claimant and Mr. Hansler acquired seniority on a totally different roster.

According to the Carrier, this case is governed by a letter dated May 2, 1984 from its senior Director of Labor Relations to the Organization’s General Chairmen. That letter reads, in pertinent part, as follows:

“A position of Welder was advertised in seniority district “X.” There were no bidders from district X but there were two qualified applicants for the position from seniority district “Y,” one, a trackman with 10 years’ seniority and a Welder-Helper with 4 years, seniority. As there is no specific provision in the agreement for making the award under these circumstances, it was assigned to the Trackman on the basis of his greater BMWWE seniority.

In our opinion, the foregoing represents an equitable solution to this matter, and will be applied in similar future situations.”

The Carrier argues that the foregoing letter established precedent governing the relative standing of employees on new rosters in situations not covered by the Agreement.

After reviewing the record evidence, we have determined that the Organization’s claim should be granted. The Claimant should have been listed ahead of Mr. Hansler on the 1991 Philadelphia (New Jersey) Divisional Structural Welder Seniority Roster.

We agree with the Organization that Rule 4, Section 1(b) governs this dispute. Simply stated, because the Claimant and Mr. Hansler were both assigned as B&B mechanics immediately prior to applying for the position as Structural Welders, their relative rank on the Structural Welding Roster is the same as it was on the B&B Mechanics Roster. On that roster, the Claimant has greater seniority. The May 2, 1984 letter does not apply here because both the Claimant and Mr. Hansler are from the Philadelphia Seniority District where the Structural Welder positions were advertised.

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 20th day of September, 2000.