

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34996
Docket No. MW-31071
00-3-93-3-45**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 assigned a junior employe who did not hold seniority on the Harrisburg Seniority District to a repairman's position on that district instead of assigning the position to Mr. J. L. Baker (System Docket MW-2271).**
- (2) As a consequence of the aforesaid violation, the Carrier will now be required to amend Bulletin #122 ‘... to show that the position of Repairman for job # 05-042-5008-3264-4 be awarded to J. L. Baker pending qualification with an effective award date of September 30, 1991.’”**

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 violated the Agreement when it failed to award the Claimant Repairman's Position No. 05-042-5008-3264-4 effective September 30, 1991. According to the Organization, the Claimant was the senior qualified bidder and should have been awarded the position. It claims that the Carrier improperly awarded the position to Mr. Allen, who held no seniority on the Harrisburg Seniority District.

According to the Organization, that the fact the Claimant at the time held no seniority on a Repairman's roster is irrelevant. Prior to applying for the disputed position, the Claimant notified the Carrier of his desire to demonstrate his qualifications as a Repairman, and, the Organization argues, the Carrier was obligated to schedule such a demonstration in connection with the Claimant's application. It notes further that when the Claimant was finally given a test on October 11, 1991, he passed and was assigned to a Repairman's position. According to the Organization, therefore, if the Carrier properly had permitted the Claimant to establish qualifications for a Repairman's position in connection with his application for the disputed position, the Claimant would have a September 30, 1991 seniority date on the Harrisburg Repairman Roster.

The Carrier, on the other hand, asserts that it properly determined that the Claimant was not qualified on September 30, 1991 to fill the subject vacancy. The Carrier maintains that it fairly determined that the Claimant lacked qualification for the position by virtue of the fact he did not hold Repairman seniority in any District. It points out that Mr. Allen, in contrast, previously was qualified as a Repairman on the Youngstown Seniority District and the Inter-Regional No. 2 Seniority District. Accordingly, the Carrier argues that its determination that Mr. Allen was fully qualified for the position and that the Claimant was not was a proper exercise of its authority and right to determine the qualifications needed by its employees and to judge the fitness and ability of applicants.

The Carrier concedes that the Claimant made previous requests to take a qualifying test for the Repairman's position. It asserts, however, that he never followed through on those requests. The Carrier argues, therefore, that it had no basis for finding that the Claimant was qualified for the position. In any case, it argues, the issue of whether on this record the Claimant was qualified for the Repairman position

presents a factual conflict which cannot be resolved by the Board. Accordingly, the Carrier asks the Board to dismiss the claim.

After carefully reviewing the record evidence, we have determined that the claim must be rejected. Under Rule 3 of the Agreement, an advertised position or vacancy must be awarded to the senior qualified person. Here, the Carrier determined that the Claimant was not qualified for the position. There is no evidence to support a finding that the Carrier's assessment of the Claimant's qualifications was unreasonable. Accordingly, there is no record basis for finding that the Carrier acted arbitrarily or capriciously.

We find no merit in the Claimant's assertion that the Carrier unfairly denied him an opportunity to demonstrate that he was qualified to perform Repairman duties. In making an application, the Claimant was obligated to establish his qualifications for the position. The Carrier previously had instructed him to make arrangements for testing, but the Claimant never followed through. There is simply no evidence that the Carrier impeded or discouraged the Claimant's efforts to demonstrate his qualifications.

We find, therefore, that the Carrier's determination in September 1991 that the Claimant was not qualified for Repairman Position No. 05-042-5008-3264-4 was neither arbitrary, discriminatory nor capricious, and his claim is 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 20th day of September, 2000.