

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35325
Docket No. MW-32940
01-3-96-3-313**

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 Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, on March 21, 1995, it awarded Mr. J. W. Peterson the position of welder grinder on Welding Crew No. 388 instead of assigning Welder Grinder E. J. Carlson in recognition of his superior seniority (System File RI. 017/8-00221).
- (2) As a consequence of the violation referred to in Part (1) above, Welder Grinder E. J. Carlson shall be ‘... reimbursed for any and all lost wages as a result of this improper assignment, beginning March 21, 1995, and continuing until this violation is corrected, as well as have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.’”

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.

The Claimant established seniority as a Welder Grinder in the Welding Subdepartment since April 1992. Of note, during the Claimant's tenure he had been previously assigned, by bulletin, to four Welder Grinder positions. On February 1, 1995, by Bulletin No. 3A, the Claimant was temporarily assigned to Welding Crew 388

at Enderlin, North Dakota. Shortly thereafter, in System Bulletin No. 14, the Carrier made the temporary Welder Grinder position on Crew 388 permanent. The Bulletin stated that:

“Applications will be received in this office until 3:00 p.m., Wednesday, March 15, 1995 for the following permanent position headquartered at Enderlin, ND on Welding Crew 388 and working the Heartland Division. Must be DAT/CDL and rules qualified. The helper position will be abolished effective the close of this assignment.”

The Claimant submitted his application for the position, and after successfully passing the required CDL exam, faxed results of same to the Carrier on March 15, 1995. There is no dispute that the Carrier received the Claimant's fax prior to the 3:00 P.M. deadline. However, on March 21, 1995, by Bulletin 14A, the Carrier awarded the Welder Grinder position to junior employee Peterson.

On May 8, 1995, the Organization submitted a claim on behalf of Welder Grinder Carlson asserting that the Carrier had violated Rules 2, 3, 4 and 11 of the Agreement when it awarded the position of Welder Grinder on Crew No. 388 at Enderlin, Wisconsin, to junior employee Peterson. The Organization requested that Carlson be reimbursed for any and all lost wages, in addition to all overtime, vacation, fringe benefits, and other rights restored “as a result of the improper assignment.”

The Carrier denied the claim premising its decision upon:

“The position of Welder Grinder on Crew 388 as advertised on Bulletin No. 14 required the qualification of a CDL license. Per Company policy, Mr. Guy Hugo of the Personnel Department, checks with the Manager of Highway Vehicles, Mr. Rohde, to verify if an employee is CDL qualified. Prior to awarding position advertised on Bulletin No. 14, Mr. Hugo checked with Mr. Rohde, and was advised that Mr. E. Carlson was not CDL qualified per Mr. Rohde's records, therefore, Mr. Carlson was not qualified for the position advertised on Bulletin No. 14.

As can be seen from the attachments to your letter, Mr. Carlson took his CDL exam on March 14, 1995, the day before Bulletin No. 14 closed. This is clearly insufficient time for the handling of the necessary paperwork to update the records in Mr. Rohde's office to show Mr. Carlson as CDL qualified.

If Mr. Carlson was truly interested in holding positions requiring CDL licenses, he would have obtained his CDL license sufficiently in advance to allow time for processing of the necessary paperwork so that he would be qualified to be awarded positions requiring CDL licenses providing he had

the seniority. Carrier cannot be held responsible for Mr. Carlson's procrastination in obtaining a CDL license."

In response to the Carrier's denial, the General Chairman noted that a Welder Grinder, as defined in Rule 2(j), is classified as a Maintenance of Way Grinder and is not classified for the operation of a truck or any vehicle that would require a CDL license. With regard to the timing of the Claimant's fax transmission, the General Chairman contended:

"Even if the Welder Grinder position required a CDL, which it does not, the Claimant clearly had such license on March 14, 1995, which was the day BEFORE Bulletin No. 14 closed. We take exception to the Carrier's suggestion that there was insufficient time to update the Claimant's record. We must point out that the assignment of Bulletin No. 14A is not dated until March 21, 1995, which is 8 days after the Claimant obtained a CDL license. In this regard the Carrier must be held accountable for their subsequent procrastination in updating their records with respect to this unnecessary requirement, and for the harm it has caused the Claimant."

A review of this record demonstrates that the Claimant was first assigned as a Welder Grinder on April 6, 1992. Since that time, the Claimant has been awarded Welder Grinder positions on four previous bulletin assignments. In fact, on February 1, 1995, by Bulletin No.3A, the Claimant was assigned to the temporary position of Welder Grinder on Crew 388, which is the exact same position classification and crew involved in this dispute.

When the Carrier elected to change the status of the Welder Grinder position on Crew 388 from temporary to a permanent position, it technically created a new position. The Carrier then properly advertised that position on February 28, 1995, in Bulletin No. 14 noted supra, in which it indicated that a CDL license was required. The Claimant applied for the vacancy, having long since qualified, under Rule 9, as a Welder Grinder and performed service as such for four years prior to the time this issue arose. The Claimant passed the CDL exam, was awarded the requisite license and notified the Carrier of same prior to the March 15, 3:00 P.M. bid close deadline. Thus, he met all of the requirements of Bulletin 14 prior to the close of the bid period and it is not disputed that he was the senior applicant. For reasons not shown or relevant, the Carrier managers reviewed the applications and finalized their selection of an applicant junior to the Claimant a day or two days prior to the close of the bid period. Had the Carrier required attainment of the CDL credential prior to the day before the close of the bid or receipt of the requisite CDL license documentation prior to 3:00 P.M. bid close on March 15, 1995, it should have so stated in the bulletin. As the fully qualified senior bidder making timely application for the position, the Claimant was entitled to

the appointment in dispute and should have been awarded same. Therefore, this claim must be sustained.

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 16th day of February, 2001.