

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35415
Docket No. MW-32493
01-3-95-3-39s**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 failed to permit Welder Helper J. B. Wright to displace junior employee T. E. Lilly at Hobson, Ohio on January 5, 1994 (System Docket MW-3434).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. B. Wright shall be compensated at the welder helper’s rate of pay for all wage loss suffered beginning January 5, 1994 and continuing until the violation ceases.”**

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 claim involves the relative seniority order of the Claimant and employee Lilly on the Welder Helpers' seniority roster. The Claimant entered the Carrier's service as a B&B Mechanic in the B&B Department on October 27, 1975. Lilly entered the Carrier's service as a Trackman in the Track Department on October 20, 1975 and subsequently acquired B&B seniority on June 22, 1987. Both the Claimant and Lilly held B&B Mechanic positions when they bid for, were awarded, and became qualified on the lower rated B&B Welder Helper positions on the same date in March 1993.

On December 30, 1993, the Claimant's B&B Mechanic position was abolished, and on January 5, 1994 he attempted to displace Lilly from his Welder Helper position. The Carrier's refusal to allow this displacement due to its belief that Lilly had greater Welder Helper seniority than the Claimant led to the Claimant's furlough and the initiation of the instant claim. Its resolution involves interpretation and application of the following Agreement provisions.

“Rule 3 - SELECTION OF POSITIONS

Section 1. Assignment to position.

In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern.

The word “seniority” as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority roster.

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 contends that Rule 3, Section 1 applies to this situation, and provides that seniority is maintained, and assignments made, in separate classes and groups, and that the Claimant possesses greater seniority within the B&B Department class in which the Welder Helper assignments were made than Lilly. It asserts that since seniority is departmental, the Claimant was contractually entitled to be placed ahead of Lilly on the B&B Welder Helper seniority roster, although with the same dates, since he had greater B&B department seniority. The Organization argues that the Carrier misapplied Rule 4 Section 1(b) which only relates to promotions to a higher class and permits ranking in order of the earliest seniority date when employees are promoted from different classes, since this is a situation where both employees were working in the same higher class (Mechanic) and bid into a lower class position (Welder Helper). The Organization relies upon Third Division Award 34991 as determinative of the issue herein, and requests that the Claimant be made whole for the time he was on furlough and be placed above Lilly on the Welder Helper seniority roster.

The Carrier argues that it properly applied Rule 4 in placing Lilly ahead of the Claimant on the Welder Helper roster. It notes that Rule 4 Section 1(b) clearly states that if employees are promoted from different classes, they will be ranked in accordance with their earliest seniority dates, and does not specify within a classification. The Carrier asserts that Lilly and the Claimant were active in separate classes when they acquired Welder Helper seniority. It contends that there is no B&B seniority class, but that such department comprises several rosters which each list seniority by class, and that Welder Helper is one of three classes within the Welder roster. Since neither Lilly nor the Claimant possessed seniority within this class, the Carrier argues that it was appropriate to consider Lilly's earlier overall seniority date in placing him on the roster ahead of the Claimant. The Carrier relies upon a May 2, 1984 letter from Senior Director of Labor Relations Bent to three General Chairmen in support of its position, as codified in Public Law Board No. 3781, Award 63. It also states that if the Organization is successful, any award of damages must be limited to the period of the Claimant's furlough, January 5 to March 7, 1994.

A careful review of the record convinces the Board that the rationale expressed in Third Division Award 34991 is equally applicable herein. While it is true that this case does not involve a promotion, but rather a bid from a higher class (B&B Mechanic) to a lower class within the same department (B&B Welder Helper), the fact remains that the only time Rule 4 1(b) permits the Carrier to rank employees acquiring seniority on the same date on the basis of earliest overall seniority is if they are promoted from

different classes. In this case the Carrier argues that since Lilly maintained active Trackman seniority from an earlier date than the Claimant at the time of the bid, he was bidding from a different class than the Claimant. However, there is no doubt that both the Claimant and Lilly held the position of B&B Mechanic at the time they bid on, and were awarded, the B&B Welder Helper position, and thus, cannot be said to be bidding from a different class at the relevant time. As the Board noted in Third Division Award 34991:

“ . . . because 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.”

Even were it argued that Rule 4 (l)(b) does not technically apply because there was no promotion involved herein, we are not convinced that the May 2, 1984 letter relied upon by the Carrier applies, as this case does not involve advertised positions in other seniority districts. The concept of department seniority set forth in Rule 3 lends further support for the Organization's position. We conclude that the Carrier violated the Claimant's seniority rights by placing him below Lilly on the B&B Welder Helpers' seniority roster, and direct that such roster be amended accordingly. Since the Claimant was furloughed between January 5 and March 7, 1994 as a result of his placement below Lilly on such roster, he shall be compensated for that time period at the appropriate Welder Helper straight time rate of pay.

AWARD

Claim sustained.

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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 26th day of April, 2001.