

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36619
Docket No. MW-35075
03-3-98-3-822**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CP Rail System (former Delaware and Hudson
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Mr. J. Hurlburt, instead of Mr. J. Mesiti, to the inter-divisional work equipment repairman's position at Oneonta advertised on Bulletin No. SWE 6.97 (Carrier's File 8-00048 DHR).**
- (2) The Agreement was violated when the Carrier assigned Mr. T. Maduri, instead of Mr. B. Delamater, to the First Subdivision work equipment repairman's position initially advertised on Bulletin No. SWE 56. 97 (Carrier's File 8-00085).**
- (3) As a consequence of the violation referred to in Part (1) above, Mr. J. Mesiti shall be allowed an inter-divisional work equipment repairman's seniority date of April 4, 1997 and he shall be compensated for all time made by Mr. J. Hurlburt.**
- (4) As a consequence of the violation referred to in Part (2) above, Mr. B. Delamater shall be allowed a work equipment repairman's seniority date as of the date Mr. T. Maduri was assigned to the position in question and he shall be compensated for all time made by Mr. T. Maduri.”**

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 presents two separate claims involving the same issue, which were consolidated for presentation in arbitration. In each case, a vacancy existed for a new Interdivisional Work Equipment Repairman (WEP) position in the First Subdivision. In both cases, the only bidders who currently possessed WEP seniority and experience were employees whose WEP seniority was based in the Second Subdivision. The Claimants are employees holding seniority in other classifications in the First Subdivision Track Department, but neither Claimant possessed WEP seniority. In these claims, they allege violations of their contractual rights when the Carrier failed to assign them to the WEP vacancies pending an opportunity to demonstrate whether or not they could qualify for the WEP position. In each case, the Carrier denied the claims, primarily on the basis that Rule 3.1 requires that employees be assigned to positions on the basis of seniority only when "qualifications being sufficient" and it is undisputed that neither Claimant was qualified to fill the position at the time of the bid and award. Additionally, the Carrier pointed out that Rule 3.3 provides that employees may demonstrate their qualification to perform the duties of the vacancy if the employee makes a written request to do so, but it is undisputed that neither Claimant made such a written request.

Careful analysis of the record and the controlling Agreement language leaves us unpersuaded by the Organization's contentions that the Carrier violated Rule 3 Vacancies and New Positions or Rule 4 Seniority, in the facts and circumstances of

this case. Moreover, in the absence of any currently qualified bidders from the First Subdivision, the Carrier's award of the WEP positions to Second Subdivision bidders who currently possessed the necessary WEP qualifications does not appear to be inconsistent with the mutual intent of the Parties, as set forth in the following contract language:

"Item Number 4 of the "Sunbury Main Project Agreement

As to the Advertising and Awarding of said positions, the following procedures will apply:

- a. Employees who hold seniority on the First Sub-Division roster will have preference on all positions based on their First Sub-Division seniority.
- b. All positions not awarded to First Sub-Division employees will be available to Second, Third and Fourth Sub-Division employees in order of their seniority on their respective rosters.

* * *

Rule 19.4

If insufficient bids are received from employees on each territory, the position shall be awarded to senior applicants from the involved territories first, and then to the senior applicants from all other territories."

Based on all of the foregoing, these claims are denied.

AWARD

Claim denied.

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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 29th day of July 2003.