

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37853
Docket No. MW-36912
06-3-01-3-467

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Mr. T. J. Blaylock to a track inspector position on Gang 7165 on June 8, 2000, instead of senior Oregon Division Track Subdepartment employe R. L. Garhart and when it subsequently force recalled Mr. G. C. Kavanaugh to Mr. Blaylock's track welder position on Gang 6762 as advertised by Bulletin ORD06776 (System File J-0020-59/1240591).
- (2) As a consequence of the violations referred to in Part (1) above, Bulletin ORD06776 shall be canceled and Claimant G. C. Kavanaugh shall have track welder's position Title Code 154 seniority date of 02/02/00 restored.”

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 instant dispute arose in June 2000, when a Track Arc Welder position in Spokane, Washington, was vacated by T. J. Blaylock, who had bid on and been selected for a Track Inspector position. The Carrier advertised the newly vacant Spokane Track Arc Welder position by bulletin, but received no bids for the position. The Claimant at the time was working as a Welder Helper in Cascadelocks, Oregon. He held seniority as a Track Arc Welder on the Oregon Division dating from February 2, 2000, and as such was the junior qualified employee of the class, regularly assigned in the lower classification of Welder Helper. There were no employees in the Track Arc Welder class on furlough. The Carrier therefore force recalled the Claimant to the Spokane Track Arc Welder position under Rule 20(e)(3) of the parties' Agreement.

After being notified of his recall by letter, the Claimant contacted NPS Specialist S. G. Novak on June 19, 2000, to tell him that he would not accept the Spokane position. According to the Carrier, the result of the Claimant's refusal of the position was the forfeiture of his seniority in the Track Arc Welder Class, under Rule 23. The Organization submitted a claim on the Claimant's behalf on June 30, 2000 (subsequently corrected on July 25) which the Carrier denied. Having failed to reach a satisfactory resolution of the issues on the property, the parties submitted the dispute to the Board for final and binding resolution.

Rule 20 of the parties' Agreement provides, in pertinent part:

- “(e) When no bids are received from employees retaining seniority in the class, the vacancy or new position will be filled in the following order:
 - (1) In accordance with the provisions of Rule 19(b);
 - (2) The junior unassigned qualified employee of the class, who is furloughed;

- (3) The junior qualified employee of the class, who is regularly assigned in a lower class; ...”

Rule 23 provides:

- “(e) Employees regularly assigned to a lower class who are recalled to a higher seniority class must return to such higher class at the first opportunity or forfeit seniority therein....”

The Organization asserts that the Carrier improperly force recalled the Claimant to the Spokane Track Arc Welder position, because Blaylock was improperly selected for and assigned to the Track Inspector position. The Organization argues that under Rules 15 (Establishment of Seniority) 19 (Promotion) and 20 (Bulletining Positions – Vacancies) another applicant, R. L. Garhart, should have been assigned to the Track Inspector position. According to the Organization, if the Carrier had not improperly assigned Blaylock to the Track Inspector position, the Spokane Track Arc Welder position would not have been vacated, the Claimant would not have been force recalled to the position, and he would not have had to forfeit his seniority.

The Organization admits that a separate claim on behalf of Garhart has been filed, in which it is asserted that Garhart rather than Blaylock should have been promoted to the Track Inspector position. Both parties during the handling of this matter on the property, and in their Submissions to the Board, devoted significant effort to presenting argument and evidence regarding the issue of whether Blaylock or Garhart should have been assigned to the Track Inspector position. The Board finds, however, that the issue of whether the Carrier acted appropriately with regard to Garhart is not properly before the Board in the instant case. If, as the Organization asserts, a violation of the parties’ Agreement occurred with respect to Garhart, that will be resolved and remedied in the case in which Garhart is the Claimant. The Organization cannot piggyback the instant matter onto Garhart’s claim. See First Division Award 23805. Claimant Kavanaugh, and the Carrier’s actions toward him, are the subject of the instant claim. To prevail, therefore, the Organization must demonstrate that the Carrier violated the parties’ Agreement in its conduct toward the Claimant. This, the Organization failed to do.

It is undisputed that the Claimant was the junior qualified employee in the class, that no qualified employees were furloughed at the time the Spokane, Washington, Track Arc Welder position became vacant, and that the Claimant's regular assignment as Welder Helper was in a lower classification. Under the clear language of Rule 20(e) it was proper for the Carrier to recall the Claimant to the Spokane position. Regardless of the reason the Spokane position was vacant, no evidence in the instant record supports a finding that the Carrier's recall of the Claimant violated Rule 20 (or any other Rule). It is also undisputed that the Claimant notified Novak that he would not accept the Spokane position. Rule 23 is unambiguous about the consequences of an employee's refusal to accept a higher class position: the forfeiture of seniority in the higher class. The Board, therefore, finds that the Carrier's actions with regard to the Claimant were taken in compliance with the applicable Agreement Rules.

Having found that the Organization failed to prove any violation of the Agreement in the instant case, the Board must deny the claim.

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 1st day of August 2006.