

**Award No. 5802**  
**Docket No. MW-5529**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Edward F. Carter, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when it failed to recognize the seniority of Welder Helper S. S. Hames and assigned junior Welder Helper C. B. Fowler to the position of Welder on April 1, 1949;

(2) That Claimant S. S. Hames, senior applicant, be assigned to the above referred to position and paid the difference between what he received as Welder Helper and what he should receive as Welder from April 1, 1949, until such time that he is assigned to the position.

**JOINT STATEMENT OF FACTS: (AS SUBMITTED BY EMPLOYES).**  
On March 15, 1949, the Carrier bulletined a permanent position of Arcwelder in its system gang, Tampa, Florida.

Two Arcwelder's Helpers, S. S. Hames and C. B. Fowler placed their applications for the position.

Arcwelder Helper S. S. Hames entered the service of the Carrier and has established a seniority date of November 10, 1947.

Arcwelder Helper C. B. Fowler entered the service of the Carrier and has established a seniority date of January 24, 1949.

On April 1, 1949, Arcwelder Helper C. B. Fowler was assigned to the position of Arcwelder.

The Brotherhood, on May 17, 1949, requested that the assignment of the position to C. B. Fowler be cancelled, senior applicant S. S. Hames be assigned, and paid the difference in rates between Arcwelder Helper and Arcwelder (qualifying) retroactive to April 1, 1949, and until such time as he is assigned to the position.

Claim was denied by the Carrier.

C. B. Fowler entered Carrier's service as Arcwelder Helper, January 24, 1949. Prior to entering our service Mr. Fowler had worked for another railroad five years as Arcwelder and five years as Welder Foreman.

On March 15, 1949, Carrier bulletined a new position of Arcwelder. No bids were received from employees already established as Arcwelders but bids were received from Arcwelder Helpers Hames and Fowler.

In making the assignment to the position consideration was given to qualifications of both Arcwelder Helpers and Mr. Fowler was assigned to the position on the basis of his qualifications whereas Mr. Hames was not qualified therefor. As stated Mr. Fowler was fully qualified by reason of his long experience whereas Mr. Hames had not served as Arcwelder and his previous experience as Signal Helper would not apply toward qualifications as Arcwelder. He was not a qualified Arcwelder and had done no qualifying work in that field. It is the Carrier's opinion, based on experience, that a man with only sixteen months experience as Arcwelder Helper is not qualified to take over and perform the exacting duties of Arcwelder.

While it is true that Arcwelder Jenkins, with whom Mr. Hames worked, wrote Chief Engineer on January 22, 1949 that Mr. Hames was getting along all right and was ready for work as a full-fledged welder and similarly advised Division Engineer on February 8, 1949, both of these statements were supplied gratuitously and without request having been made by the Carrier's officers who were, in line with the then and present practice, keeping in close touch with the progress being made by Mr. Hames during his period of apprenticeship. Mr. Hames was not, in the judgment of his supervisors, then qualified to take on and satisfactorily perform the exacting duties of an Arcwelder. This was no reflection upon Mr. Hames, as he simply had not worked a sufficient length of time as Helper to qualify for promotion to Arcwelder. It takes considerable experience and ability to fill position of Arcwelder and like other mechanical positions a necessary period of training or apprenticeship must be served to qualify therefor. This must of necessity be left to the judgment of qualified officials of the Carrier. There is no discrimination made in the selection of men it is felt are qualified to take on more exacting and responsible duties but care must be exercised to see that operations requiring special skill are not entrusted to employees before they have acquired the necessary skill to satisfactorily perform such duties. Experience has also taught us that it is a serious mistake to push or rush a man too fast—to do this will do harm rather than good to the individual. The Carrier feels that the determination of such qualifications is its responsibility and prerogative, as outlined in Third Division Award 3668.

The Carrier asserts that its action in not awarding the position of Arcwelder to claimant was not influenced by bias, prejudice or by any arbitrary and capricious purpose to circumvent the spirit and intention of the agreement. It is, therefore, respectfully requested that this claim be denied.

All data as herein contained has been discussed with or made known to the Organization.

**OPINION OF BOARD:** On March 15, 1949, Carrier bulletined a permanent position of Arcwelder at Tampa, Florida. Two Arcwelder Helpers, S. S. Hames and C. B. Fowler, applied for the position. Hames, the Claimant, had seniority as an Arcwelder Helper as of November 10, 1947. Fowler had a seniority date as Arcwelder Helper of January 24, 1949. Carrier awarded the position to Fowler and Claimant Hames contends that his prior seniority date was improperly ignored.

The controlling rule of the Agreement is Rule 2(b), which provides:

"Appointments to new positions, or to fill vacancies, other than laborers, will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the employees entitled to consideration, during which time employees may file applications

with the official whose name appears on the bulletin. Appointment will be made before the expiration of fifteen (15) days, from date of the bulletin. Ability and merit being sufficient, seniority shall prevail in the appointment."

Claimant was senior to Fowler. If Claimant has sufficient ability and merit, he has a valid claim. A determination of this question will resolve the issue presented.

Claimant had been employed as an Arcwelder Helper for approximately sixteen months. The Carrier asserts that Claimant was not qualified, that he had performed no qualifying work, and that his sixteen months' service as Arcwelder Helper was not sufficient to qualify him.

The burden is upon the Claimant to show that he had sufficient ability and merit. He attempts to make such proof by producing a statement of an arcwelder with whom he worked that he was qualified. While this is some evidence of the fact, it is not sufficient, standing alone, to qualify the Claimant. The record does not disclose any abuse of discretion on the part of the Carrier in determining that Claimant lacked ability and merit for the position of Arcwelder. His training and experience as an Arcwelder Helper are not detailed and it is not shown that he had any experience as an Arcwelder as in the case of Fowler who worked for many years as an arcwelder on another railroad. The Organization contends that Claimant should have been assigned as an Arcwelder and given six months' period to qualify under Rule 10 (c). Rule 10(c) never became effective in the present dispute. It applies only after a Helper has been promoted. Any attempt to apply it before a promotion has been made is premature.

The Agreement permits the Carrier to consider ability and merit before seniority becomes effective. The determination of the Carrier will not be disturbed unless it has acted arbitrarily and unreasonably. We do not think the record made by the Organization affirmatively shows that the Carrier failed to properly apply the agreement.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 26th day of May, 1952.