

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22579
Docket Number MW-22425

Robert A. Franden, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Port Terminal Railroad Association

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the bids of qualified and eligible applicants for the position of welder helper as advertised in Bulletin No. 151, dated February 15, 1977 were ignored and said position of welder helper was 'awarded' to an individual who held no seniority with this Carrier and who was thereby ineligible to bid for said position.

(2) Claimant G. H. Means shall be allowed the difference between the welder helper's rate of pay and the trackmen's rate of pay for eight hours on each work day and holiday falling within the period beginning with March 8, 1977 and continuing until Bulletin No. 155 is cancelled and Claimant Means is assigned to the position of welder helper."

OPINION OF BOARD: The Carrier advertised by bulletin for the position of Welder Helper. The Claimant bid on the job but the Carrier elected to fill the position with a new hire. The Claimant takes the position that the Carrier denied him the position solely due to his questionable attendance record in January and February of that year. It is the Carrier's position that it exercised its prerogative to judge the ability, merit and fitness of the applicants as provided in Rule 9(a) and when doing so found the Claimant wanting.

"RULE 9

PROMOTION

(A). In filling vacancies and new positions and making promotions, ability, merit, fitness and seniority shall be considered. Ability, merit, and fitness being sufficient, seniority shall prevail, the Management to be the judge.

"(B). Employees declining promotion shall not lose their seniority.

(C). Employees promoted and afterward demoted for failure to qualify or other causes will not lose their accumulated seniority in the grade to which returned and will be allowed to take former position if still vacant and unassigned, otherwise they will displace a junior employee of their class. Such employees will forfeit seniority in the classification from which demoted, if such seniority has been established."

The Carrier's letters of declination during the handling on the property indicate that more than Claimant's absenteeism was considered by the Carrier when weighing his qualifications for the position. All correspondence from the Carrier references the Claimant's lack of qualification for the specific work. The handling on the property demonstrates that the Carrier based its decision not to award Claimant the position on more than just his attendance record as alleged.

Absent a showing that the Carrier abused the discretion reserved to it under the rule we will not interfere with its decision. There has been no such showing in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Number 22579
Docket Number MW-22425

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.