

The Third Division consisted of the regular members and in addition Referee Edwin A. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation- (Amtrak)  
Northeast Corridor

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

(1) The Carrier violated the Agreement when, effective June 22, 1984, it assigned junior employee W. McKinnon instead of Mr. W. Trader to the EWE PUM position advertised by Advertisement No. 14-PRS-0584 (System File NEC-BMWE-SD-1102).

(2) As a consequence of the aforesaid violation, Mr. W. Trader shall be allowed a seniority date of June 22, 1984 on the EWE Seniority Roster, his name shall be placed immediately ahead of Mr. McKinnon's name on that seniority roster and he shall be allowed the difference between what he earned at the trackman's rate of pay and what he would have earned at the EWE-B rate of pay beginning June 22, 1984 and continuing until the violation is corrected."

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 employees 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 waived right of appearance at hearing thereon.

At the relevant time, Claimant held the position of Trackman in the Carrier's Panel Renewal System (PRS) Unit. In this Claim, the Organization asserts that the Carrier wrongfully assigned Trackman W. McKinnon to the Class "B" Engineer Work Equipment (EWE-B) PUM (Portique Universale de Manutention) position effective June 22, 1984, which position's bulletining period closed on June 8, 1984.

The record clearly establishes that Claimant's position is without merit. Rule 1 relied upon by the Organization states that "qualification being sufficient, seniority shall govern." Although the record demonstrates that Claimant may have had an earlier service date than McKinnon, Rule 1 further states that "'seniority'...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 ...". As shown by the EWE-MO seniority roster, McKinnon was senior to Claimant within the meaning Rule 1 as an incumbent PUM operator by virtue of an award effective December 19, 1983. McKinnon had been PUM qualified since November 10, 1983. As of the date the bulletining period closed, Claimant was not qualified for the PUM and the record reveals that Claimant was not qualified for the PUM until August 20, 1984. McKinnon was therefore properly assigned.

The Organization's arguments that Claimant was improperly refused the opportunity in the past to qualify for the position, and that the Carrier's use of qualification cards is improper cannot change the result. Claimant asserts that he first made requests for qualification in April 1984. Putting aside the Carrier's responsible arguments that Claimant made those requests to the wrong individual and that he actually applied after the bulletining period closed, the record, nevertheless, shows that McKinnon held seniority within the meaning of Rule 1 even prior to the time of Claimant's first alleged requests. Similarly, the argument that another employee had not seen McKinnon operate the PUM prior to the award of the position in this case cannot change the result in light of the unrefuted evidence showing McKinnon's seniority and qualification. Finally, the Organization's argument that McKinnon's seniority date was not raised on the property and, therefore, cannot now be used must be rejected in this case since the dispute concerning who had the higher seniority existed since the commencement of this matter, and both parties had access to the seniority roster.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.