

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(St. Louis Southwestern Railway Company

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

(1) The Agreement was violated when the position of welder helper on WG #4014 as advertised by Bulletin No. W-10-N dated June 22, 1984 was awarded to Mr. J. E. Pree instead of Mr. F. Hawkins on July 5, 1984 (System File MW-84-30-CB/53-744).

(2) (a) Claimant F. Hawkins shall be allowed one hundred forty-four (144) hours of pay at the welder helper's rate for the first eighteen (18) days beginning July 9, 1984 and eight (8) hours of pay for each work day thereafter on a continuing basis until the violation referred to in Part (1) hereof is discontinued.

(b) Claimant F. Hawkins shall be awarded a seniority date as welder helper as of July 9, 1984."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant is employed as a Track Laborer by Carrier on Seniority District 1; his seniority date is May 22, 1978. Track Laborer J. E. Pree established seniority on Seniority District 2 on May 23, 1975. In June 1984, Carrier advertised a Welder Helper vacancy in Seniority District 1, and Pree was assigned to the position effective July 9, 1984, since he was an active employee and Claimant was in a furloughed status. The Organization thereafter filed a claim on Claimant's behalf, challenging Carrier's assignment of Pree to the Welder Helper vacancy.

This Board has reviewed the evidence in this case, and we find that the Organization has presented sufficient evidence to demonstrate that the Rule requires that if there is a qualified or potentially qualified bidder within the seniority district, the Carrier is required to award the position to that employee. (See Award 129, Special Board of Adjustment 280 on the property.) That has been the unrefuted practice between the parties and, therefore, this claim must be sustained. The Claimant shall be awarded the position in question.

With respect to the backpay due the Claimant, this Board finds that the Claimant shall be allowed the difference in pay between what he would have received had his rights not been violated and what he actually received. If Claimant was furloughed, he should receive eight hours pro rata until he was returned to service; and then once he was returned, he shall receive the difference in pay between the Welder Helper rate and the one he received. He shall not be allowed to collect any additional damages. (See Interpretation 1 to Third Division Award 23541, and Interpretation 1 to Second Division Award 9264.)

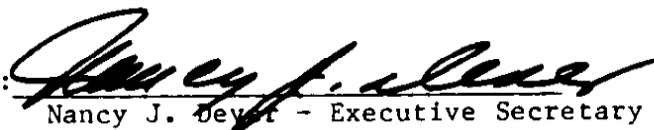
Finally, Claimant shall be awarded the seniority date of Welder Helper as of the date he should have received the position had the Agreement not been violated, i.e., July 9, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

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