

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

(1) The Carrier violated the Agreement when, effective April 8, 1988, it assigned junior Welder Helper S. J. Smith, Jr., instead of Welder Helper J. A. Mendez to fill the welder position on Gang No. 1760 advertised on Bulletin No. TFW-025-88 (Carrier's File 880281 MPR).

(2) As a consequence of the aforesaid violation, Mr. J. A. Mendez shall be allowed a welder seniority date of April 8, 1988 and he shall be placed immediately ahead of Mr. S. J. Smith, Jr. on the Welder Seniority Roster. In addition, Mr. Mendez shall be compensated for all straight time, overtime and holiday wage loss suffered beginning April 8, 1988 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.

On April 4, 1988, the Carrier posted Bulletin No. TFW-025-88 covering the position of Welder. Two Welder Helpers applied for the position, the Claimant and an employee junior to him. The position was awarded to the junior employee.

The Organization argues that this move was to the detriment of the Claimant's seniority rights and in violation of Rule 10(a) which reads as follows:

"Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail, the management to be the judge subject to appeal."

The Carrier defends its position by contending that the junior employee had superior qualifications and that it exercised its right to select on this basis.

The Board finds that the Carrier reads too much into Rule 10(a). That Rule calls for the application of seniority where ability and merit are "sufficient." It does not give specific preference to a judgment as to relative "ability and merit." Nothing was shown on the record to indicate that the Claimant, as an experienced Welder Helper, had insufficient ability and merit to bar him from the position.

What is not known is whether or not the Claimant, if selected, would in fact have qualified for the Welder position after selection. The Award will provide, therefore, that the Claimant shall be paid the difference in pay between that he would have received as Welder, if selected, and the pay he actually received. This shall apply until he is placed on the position in question or until that position was abolished, whichever occurs first. The Claim for granting of Welder seniority is not sustained, since this would be subject to the Claimant's actual placement in and qualification for the position.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1991.