

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30752
Docket No. MW-30215
95-3-91-3-664

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
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(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier assigned junior Track Department employees S. P. Reust and A. L. James to welder helper positions on Bulletins KGR00244 and KGR00245 respectively, instead of assigning senior Track Department employee G. A. Disney who was qualified, willing and available to be assigned thereto (System File S-351/900581).

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed pay equal to the amount he would have received absent the violation from April 30, 1990 and continuing, and be ranked ahead of the aforementioned junior employees on the Kansas Division Group 14 Welder Helper Seniority Roster."

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 employee 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.

The Claimant, with former experience as a Welder and Welder Helper, bid on two bulletined positions as Welder Helper. The Carrier awarded the positions to two employees junior to the Claimant. Rules governing the filling of bulletined positions are as follows:

"RULE 19. PROMOTION

(a) Promotion shall be based on ability, qualifications, and capacity for greater responsibility and where these requirements are sufficient, seniority shall prevail.

(b) Positions of foremen and supervisors will be filled by promotion of available qualified employees. Positions of foremen or supervisors, or other positions that are not filled through bulletining to employees in seniority class, will be filled from available qualified employees in the other classes of the seniority group, and in the event not so filled will be filled from available qualified employees in the other groups of the subdepartment, and where ability and qualifications are sufficient, seniority shall prevail, the Management to be the judge with respect to positions covered by this section.

RULE 20. BULLETINING POSITIONS-VACANCIES

* * *

(c) When no bids are received from employees regularly assigned in the class, the senior unassigned employee in the class whether furloughed or working in a lower class, will be assigned. In the event there are no furloughed or unassigned employees in the class, the vacancy or new position may be filled in accordance with the provisions of Rule 19(b)."

The Carrier does not challenge the Claimant's "ability and qualifications" as a Welder Helper. In the claim handling procedure, the Carrier concerned itself with the Claimant's "unavailability" because of his attendance record in the period immediately prior to the bulletining of the Welder Helper positions. This appears to be concerned with his travel with his wife, who was the President of a Carrier-sponsored organization, the Junior Old Timers Club. The difficulty with this argument is that the Carrier not only approved the Claimant's travel, but continued his regular pay during such travel. Reference was also made to the Claimant's work time spent on "Union business." The Organization states that some of this time may well have actually been connected with the Junior Old Timers Club. In any event, the Organization correctly notes that the Carrier may not penalize an employee for exercise of union responsibilities, as provided in Rule 47.

In its Submission to the Board, the Carrier argues as to the Claimant's lack of "capacity for greater responsibility," as referenced in Rule 19. As the Organization points out, a full examination of the on-property Carrier appeal responses shows no reference to this point. As such, it is a new argument and not properly before the Board.

Beyond all this, the Carrier has totally failed to show that the Claimant lacked "sufficient" ability and qualifications. On this basis, the Claimant was improperly denied his seniority right to the Welder Helper position. He is entitled to the requested seniority ranking. In addition, the Claimant shall receive the pay requested to the extent that his pay as Welder Helper would have exceeded pay he has received since April 30, 1990. This shall continue until he is placed in a Welder Helper position to which his seniority entitles him or until he indicates he does not wish to leave his present assignment.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 1995.