

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31319
Docket No. MW-31897
96-3-94-3-224

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Lake Superior & Ishpeming Railroad Company

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

- (1) The Carrier violated the Agreement when it assigned junior employee T. Beaudry to the newly created welder position within Assignment No. 3, dated January 19, 1993, instead of assigning Mr. S. Niemi in recognition of his superior seniority and in compliance with the provisions of Rule 16 (System File R711).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. S. Niemi shall be "... reimbursed for the equivalent of any and all lost wages at the pro rata rate beginning from the time of the improper assignment and continuing until such time as this violation is corrected, and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation."

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.

Claimant has a Certificate, dated May 11, 1992, that he completed the requirements of an Adult Education Welding Course offered by a local school. Between November 9 and 29, 1992, Claimant worked, without disqualification, as a Carrier Welder on OSHA required modifications to Carrier's Marquette, Michigan, Ore Dock. Under date of January 6, 1993, Carrier bulletined a Welder position. Claimant bid on the job, but was not assigned. It was given to a junior employee, with the Carrier contending that Claimant was not qualified. The Organization filed the instant claim, arguing that Claimant was entitled to the job under Rule 16.

Upon review of the record the Board concurs with the Organization. The record demonstrates that Claimant possessed the basic qualifications for the position bulletined on January 6, 1993. Carrier was obligated under the Agreement to effect his assignment to the job, rather than assign a junior employee it believed to be more qualified. In the event that Claimant could not do satisfactory work after being assigned, Carrier was privileged, within 60 days, to proceed to disqualify him from the job. However, because he possessed basic qualifications as a Welder, it was not privileged to deny him the opportunity to work the job in the first place.

The record demonstrates that the job was filled on January 19 and abolished on April 9, 1993, and not reestablished thereafter. The claim will be sustained for this period.

AWARD

Claim sustained.

ORDER

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 25th day of January 1996.