

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31710
Docket No. MW-32170
96-3-94-3-566**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier advertised and awarded a work equipment mechanic position, effective July 26, 1993, to junior employee E. A. Randall, instead of Mr. L. E. Ballard (Carrier’s File 930784 MPR).

(2) As a consequence of the violation referred to in Part (1) above, Claimant L. E. Ballard shall be allowed travel time and mileage from the Fort Worth Shop to Monroe, Louisiana and he shall be compensated for any time lost or difference in pay, resulting from his not being assigned to the position in question, beginning July 26, 1993 and continuing until he is assigned thereto.”

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 were given due notice of hearing thereon.

On July 9, 1993, Carrier issued job bulletin no. FTW00064 advertising a vacancy for a Work Equipment Mechanic ("WEM") at the Carrier's Fort Worth Shop. The bid closing date and time was specified in the bulletin as 7:00 a.m. CST, July 19, 1993. Claimant and E. A. Randall bid on the position. On July 19, 1993, the Carrier awarded the position to Randall effective July 26, 1993, rather than Claimant. This claim followed.

The parties agree with the principle that the employee with the greater seniority in the WEM classification was entitled to the WEM position at Fort Worth. The dispute in this case is whether, at the relevant time, Claimant or Randall had the greater seniority. The Carrier asserts that Randall had the greater seniority because, at the time of assignment, Claimant had no seniority in the WEM classification and Randall had a July 16, 1992 seniority date. The Organization asserts that Claimant's seniority in that classification was June 25, 1990 - i.e., greater than Randall's July 16, 1992 seniority date.

On July 16, 1992, Randall entered into the WEM Training Program. The record sufficiently discloses that on June 10, 1993, Randall was promoted to Work Equipment Mechanic pursuant to Section 13 of the March 1, 1985 Memorandum of Agreement governing training ("A trainee having previous experience or formal training as a mechanic may receive credit toward completion of the Training Program"). As a result of Section 3(c) of that Memorandum, Randall was assigned as a WEM and established seniority back to July 16, 1992 ("Carrier will assign a trainee successfully competing the program to the district where vacancies may exist. The Trainee will be assigned a seniority date as a Work Equipment Mechanic on the seniority roster of the district having jurisdiction over that position as of the date he enters the program.").

Claimant entered the WEM Training Program on June 25, 1990. Claimant now has a WEM seniority date of June 25, 1990 - i.e., greater than Randall. For future exercises of seniority, Claimant's seniority will be superior to Randall's. However, the record shows that Claimant did not establish that greater seniority date until July 19, 1993 (after Randall established his seniority) when Claimant began compensated service as a WEM at Monroe, Louisiana, where he was assigned because no bids were received on a position at that location.

We find that the record sufficiently establishes that Randall obtained his July 16, 1992 seniority date prior to the closing of the bid for the Fort Worth position as a result of successfully completing the WEM Training Program and being assigned to a position. The burden in this case is on the Organization. To meet that burden, the Organization must specifically show that Claimant accrued his June 25, 1990 seniority prior to the assignment made to Randall on July 19, 1993 for the Fort Worth vacancy. The Organization has not done that. At best, the Organization has shown that Claimant's accrual of a WEM seniority date of June 25, 1990 due to Claimant's successful completion of the WEM Training Program and his assignment to the position in Monroe occurred on the same date that Randall (who had already obtained WEM seniority) was awarded the Fort Worth position. The transactions may have been close in time, but the Organization is still obligated to show that Claimant obtained WEM seniority before the assignment was made to Randall. The Organization has not done so. Under the circumstances, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of September 1996.