

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31830  
Docket No. MW-31318  
96-3-93-3-278**

**The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Agreement was violated when the Carrier advertised a trackman’s position at Hazleton, Pennsylvania within Bulletin No. 18 and failed to award said position in compliance with the provisions of Rule 3, Section 3 (System Docket MW-2427).**

**(2) As a consequence of the violation referred to in Part (1) above, Trackman G. Kokinakis shall be allowed forty (40) hours’ pay, per week, at the trackman’s straight time rate beginning September 4, 1991, and continuing until the Claimant is assigned to the trackman’s position at Hazleton with proper seniority applied.”**

**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 August 26, 1991, the Carrier's Philadelphia Division posted Bulletin No. 38, which included advertisements for two Trackman positions on the Tie Gang at Hazelton, Pennsylvania, on the New Jersey Seniority District (Job No. 91-335). While furloughed from service, the Claimant submitted an application to Bulletin No. 38 for one of the Trackman positions. The Claimant had established and held seniority as a Trackman on the Youngstown Seniority District, but held no seniority within the New Jersey Seniority District.

On September 4, 1991, the Carrier issued the awards to Bulletin No. 38, listing the Trackman positions to which the Claimant had made an application as "No Qualified Bidders."

Three Trackman positions for the Hazelton Tie Gang were advertised on Philadelphia Division Bulletin No. 39 (Job No. 91-340). No bids were received for these positions. Two Trackman positions for the support gang at Hazelton were advertised on Bulletin No. 40. There is a factual dispute over who, if anyone, was awarded the positions.

By letter dated September 19, 1991, the District Chairman submitted a claim alleging that the Carrier violated the Agreement by failing to award the Claimant a Trackman position at Hazelton based on his bid on Bulletin No. 38. The claim requested 40 hours pay per week beginning September 4, 1991, continuing until the Claimant is awarded the Trackman position for which he bid.

The issue before the Board is whether the Carrier was required to award a bulletined position to an employee who does not possess seniority rights in the district on which the position was posted.

The Organization argues that the Carrier violated the Agreement when it assigned the position to an employee whose seniority was from outside the district, as was the Claimant's, but who possessed lesser overall seniority than the Claimant.

The Carrier argues that the Claimant's lack of seniority on the New Jersey Seniority District Roster precludes any claim to the position in dispute. The Carrier argues that it did not have to hire from the outside to fill the position, and would not have in any event, as there were furloughed employees on the New Jersey District Roster.

The Organization relies on Rule 3 (Selection of Positions) and Rule 4 (Seniority). Rule 3 states in Section 1: "In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern." The next paragraph defines seniority as, "... seniority in the class in which the assignment is to be made...."

In Third Division Award 31075, this Board held in a similar case that a Claimant who held no seniority in the district for which the position was posted had no right to be awarded the position. Other Third Division Awards have stated that when the Carrier goes to rosters outside a seniority district to fill vacancies, the employees on the seniority roster of the outside district are entitled to compete against one another for the job vacancy on the basis of seniority. See, e.g., Third Division Award 26944.

In the handling of this case on the property, a factual dispute arose over whether the Trackman position sought by the Claimant actually had been filled. In his letter to the Carrier's Manager-Labor Relations dated December 16, 1991 the District Chairman stated that he had been advised that the Carrier hired applicants from the unemployment office to fill the positions. The Manager-Labor Relations specifically denied this claim in his letter to the Vice-Chairman dated March 11, 1992: "[T]he position was not awarded to a new hiree through the unemployment office as alleged in the instant claim."

Subsequently, the Organization alleged that the positions in question were awarded to B.R. Miller and W.E. Lepsch, both of whom have New Jersey Division Trackman Roster dates reflecting less seniority than the Claimant. The Carrier continues to assert that the position bid on by the Claimant was never filled. This factual issue is essential to the resolution of this case, and the Organization has not provided adequate proof to establish the violation. Therefore, the claim must 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.**

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**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 26th day of December 1996.**