

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31886
Docket No. MW-30393
96-3-92-3-130

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 and awarded, through Bulletin Notice A-072, the position of welder foreman instead of advertising and awarding through bulletin the position as welder (System Docket MW-1663).

(2) The claim as presented by District Chairman R. F. Kent on October 22, 1990 to Division Engineer R. J. Rumsey shall be allowed as presented because said claim was not disallowed by Division Engineer R. J. Rumsey in accordance with Rule 26 of the Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the welder foreman position advertised through Bulletin Notice A-072 shall be canceled or abolished and the position of welder shall be advertised and awarded in its place."

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.

The Organization contends that the Carrier erroneously advertised a position of Welder Foreman instead of Welder in its Bulletin Notice A-072 on October 1, 1990. This is based on the contention that the description of the bulletined position was that of Welder. Examination of the full text of the bulletin, however, shows that it did indeed specify the responsibility of a Welder Foreman.

The resulting action of the Organization was to initiate what was identified as a "grievance."

There was no violation of seniority rights in the filling of the vacancy. Further, the Carrier points out that a further bulletin for a Welder Foreman was posted when the incumbent moved to another position. This bulletin was filled without protest from the Organization.

The Board is at a loss to determine what remedy would be appropriate even if merit is found in the Organization's argument. Certainly, there is no basis to require the Carrier to create a Welder position if it does not wish to do so. With this conclusion, there is no need to examine whether, under Rule 26, a distinction can or should be made between a "claim" and a "grievance" as to the necessity for the Carrier to reply within a fixed time period. The grievance (or claim) was defective from the outset.

AWARD

Claim dismissed.

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 4th day of March 1997.