

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31998
Docket No. MW-30633
97-3-92-3-393**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly posted E.T. Bulletin #019-90 advertising position NYSF-2 Foreman/Cable Splicer under date of September 27, 1990 (System File NEC-BMWE-SD-2901 AMT).**
- (2) The Agreement was further violated when the Carrier posted E.T. Bulletin #021-90 as 'No Qualified Bids' even though Mr. W. B. Marsh had submitted a bid therefor and was a qualified electrician, had previously performed foreman's duties and had qualified and graduated from the Biddle Cable Fault Finding School (System File NEC-BMWE-SD-2856).**
- (3) The Agreement was further violated when the Carrier posted E.T. Bulletin #022-90, awarding the advertised NYSF-1 Foreman position to Mr. R. Gray, with effective date of November 23, 1990 (System File NEC-BMWE-SD-2855).**
- (4) As a consequence of the violations referred to in Parts (1) and/or (2) and/or (3) above, the Carrier shall rescind the award of the position to Mr. Gray, the Claimant shall be awarded the NYSF-4 position effective November 7, 1990, he shall be compensated for all wage loss suffered beginning November 7, 1990 and continuing until the**

violation is resolved and he shall be awarded a foreman's seniority date as of November 7, 1990."

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.

Claimant W. B. Marsh established and holds seniority as a Substation Electrician. At the time this dispute arose, Claimant was regularly assigned and working as such at Penn Station, New York.

On September 27, 1990, the Electric Traction Department posted position NYSF-2 - Foreman/Cable Splicer under Bulletin No. 019-90. The Organization protested the posting, maintaining that Carrier had "merged two classifications into one position," thereby creating a "new classification" not provided for by the Agreement. Carrier awarded the advertised position to Mr. R. Gray, however, due to the impropriety of the advertisement, the award was never implemented.

The Carrier subsequently re-advertised the position under Bulletin No. 021-90. Although this bulletin contained the proper job title, this posting did not contain a reference to the need for applicants to be qualified on lead cable splicing. The award to this bulletin was issued as a "No Qualified Bids."

The Carrier advertised the position for a third time by way of Bulletin No. 022-90. This bulletin contained both the proper job title and a complete description of the

required qualifications. The position was awarded to Mr. R. Gray, an employee junior to Claimant, prompting the Organization to protest the award on behalf of the Claimant:

"The Carrier offered no explanation or reason for denying Mr. Marsh the position nor did it present evidence that Mr. Marsh was lacking qualifications for the position. The Organization contends that the Carrier made a pre-determined, arbitrary and discriminatory decision in this case that has resulted in a monetary loss and a loss of seniority rights for this employee.

Additionally, the Organization takes exception to the Carrier amending the initial bulletin whereas it posted additional duties not contained in the original advertisement and thereby created a 'New Classification' under the Scope of the Agreement after the close of the advertisement period. Based on the original advertisement, Mr. Marsh was the senior, qualified applicant for the position."

The Organization described Claimant's "experience" being called to fill vacancies for Foreman positions and, in addition, that Claimant was "assigned to, and became proficient at, splicing miles of new signal line." Finally, the Organization pointed to the fact that Carrier sent the Claimant to attend the Biddle Cable Fault Finding School in 1990.

Carrier denied the claim asserting that:

"Mr. Ruthven Gray was given a certificate of achievement in cable splicing dated 5/20/87 and was one of four to complete the school and did very well. The enclosed work history of Mr. Marsh does, in fact show he has no experience with lead cable or hands-on instruction and theoretical background to complete splices per manufacturers specifications or has no training in making splices per manufacturers specifications or has no training in making splices or most of all checking them.

Nowhere do records show Mr. Marsh having signed up to attend school or show interest in the school. The circumstances indicate that the position for lead cable splicer was subsequently awarded to the most qualified employee."

During the appeals process, in accordance with Rule 2(b), the Division Manager-Labor Relations offered Claimant an opportunity to demonstrate his qualifications for supervising the duties of lead cable splicing. The Organization declined the offer.

During the May 1991 final appeal conference both parties agreed that the advertisement of position NYSF-2 and subsequent award had never been implemented. Accordingly, the issue described in paragraph (1) of the Organization's statement of claim is dismissed for mootness.

The fundamental premise for this claim is the assertion that Claimant's superior seniority in the Gang Foreman class, in conjunction with his cable splicing experience filling vacancies entitled him to preference in the Carrier's award of the disputed Foreman position. However, neither the facts nor the relevant contract language supports this position. In pertinent part, Rule 1 states:

"In the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern."

There is no dispute that the Claimant is senior to Mr. Gray. However, there also can be no dispute that Claimant completely lacked the qualifications which the junior employee, Mr. Gray currently possessed. The Claimant was afforded the opportunity to prove that his qualifications were sufficient but, for whatever reason, the Claimant chose not to take that opportunity. Based on all of the foregoing, this claim is denied.

AWARD

Claim denied.

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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 6th day of May 1997.