

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33389  
Docket No. MW-32267  
99-3-95-3-81

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier awarded a Bridge and Building (B&B) inspector position on Bulletin No. 192 to junior employee M. Vodhanel instead of Mr. W. R. Postlewaite (System Docket MW-3244)
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate the Claimant for eight (8) hours at the applicable B&B inspector's straight time rate and any overtime worked by the junior employee at the time and one-half rate beginning July 6, 1993 and continuing until the Claimant is properly awarded the position.”

**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.

Following a posting of a B&B inspector position the Claimant and other fellow employees, including M. Vodhanel, bid on the position. However, none of the bidders had established seniority in that classification. Thus, on the basis of which employee had the earlier hire date, the position was awarded to Vodhanel. However, the Claimant established seniority as a B&B mechanic earlier than Vodhanel.

The Organization contends that in doing so the Carrier violated Rule 3 which provides, in relevant part:

**"In the assignment of employees... qualifications being sufficient, seniority shall govern.**

**... 'seniority'... means, first, seniority in the class in the assignment to be made, and thereafter, in the lower classes, respectively, in the same group in the order as they appear on the seniority roster."**

In light of the foregoing Rule the Organization contends that because neither the Claimant nor Vodhanel has established seniority as a B&B inspector, the position should have been awarded to the Claimant as he had established seniority in another B&B class than Vodhanel.

In reply the Carrier contends that pursuant to a May 2, 1984 letter transmitted to the Organization it has, before this claim selected between applicants with no seniority in the class in which the assignment is to be made on the basis of their relative BMW seniority. Therefore, its assignment in this matter was equally appropriate. The Organization on the other hand argues that the May 2, 1984 letter has no relevance to this matter for it is restricted to those cases, not applicable here, where there are no bidders in the seniority district in which the assignment is to be made.

Although the Organization appears to be correct as to its characterization of the May 2, 1984 letter when the content of the letter is examined, it's position does not however take into account the manner in which the selection process set forth in that letter has been applied thereafter. In this regard the Carrier has supplied evidence of the application of relative BMW seniority in cases such as the instant one and Award 63 of Public Law Board No. 3781 between these same two parties finding that in identical circumstances the application of the May 2, 1984 letter was appropriate as the process contained therein were "... reasonable, fair, and not inconsistent with the

Agreement rules . . .” and that the Organization did not suggest consideration of any alternative procedures. Under the circumstances, we seen no reason to deviate from that practice and precedent.

**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 13th day of July 1999.