

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35423
Docket No. MW-32877
01-3-96-3-218**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 assigned junior employee R. W. Durn to fill the vacant welder position at Kingston, New York on April 4, 1994 while it was pending bulletin assignment and thereafter awarded that junior employee the welder position on April 18, 1994, instead of recalling and/or assigning furloughed employee E. A. Gamble to the welder position in recognition of his superior seniority in that classification (System Docket MW-3721/Case Number 1040500099).**
- (2) The Agreement was violated when the Carrier assigned junior employees G. H. Berrier and J. DeStefano to the advertised welder positions headquarters at Kingston, New York, instead of assigning Mr. D. Hirtz to one of the two (2) welder positions in recognition of his superior seniority in that classification (System Docket MW-3721/Case Number 1040500100).**
- (3) As a consequence of the violation referred to in Part (1) above:**
 - (a) The Carrier shall compensate Claimant E. A. Gamble for all time earned by the junior employe, including overtime for the period of April 4 through 18, 1994.**

- (b) The Claimant shall be allowed the rate differential and all overtime lost as a result of the improper assignment beginning on April 18, 1994 and continuing.
 - (c) All lost benefits and/or credits normally due must be allowed.
- (4) As a consequence of the violation referred to in Part (2) above:
- (a) The Carrier shall compensate Claimant D. Hirtz for the rate differential and all overtime lost as a result of the improper assignment beginning on April 18, 1994 and continuing.
 - (b) All lost benefits and/or credits normally due must be allowed."

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 material facts that gave rise to this claim are not in dispute. The Claimants both hold seniority as Welders on the New Jersey Seniority District. In April 1994, both Claimants were furloughed when the Carrier advertised three Welder positions headquartered at Kingston, New York. The Claimants submitted a proper application for two of these positions. However, the Carrier recalled employees from furlough to fill these Welder positions. The employees recalled were junior to the Claimants.

From April 4 through April 18, 1994, the Carrier assigned Welder position No. 05-031-3610-3237-8 to R. W. Duran pending bulletin assignment. On April 18, 1994, the position was awarded to Mr. Duran. Mr. Duran was junior to Claimant E. A. Gamble who had applied for the position while he was furloughed. E. A. Gamble was recalled from furlough on April 18, 1994, and assigned to a Trackman Operator RG110 position. On May 8, 1994, he bid into a new position.

On April 18, 1994, the Carrier awarded Welder position No. 050-031-3610-3239-4 to employee J. DeStefano. Mr. DeStefano was junior to Claimant David Hirtz who had also applied for the position while he was furloughed. Mr. Hirtz was recalled from furlough on April 18, 1994, and assigned to a Trackman Operator RG110 position. On May 18, 1994, he bid into a new position.

On May 19, 1994, the Organization submitted time claims on behalf of David Hirtz and E. A. Gamble contending that the Carrier violated Rules 3, 4 and 17 of the prevailing Agreement when it failed to recall these employees from furlough to fill Welder positions to which they had submitted bids. Rather than assign the Welder positions to the Claimants who were qualified and available for them, the Organization contends that the Carrier violated the Agreement by assigning these positions to junior employees.

The Carrier denied the claims contending that neither Claimant was qualified on the Book of Rules nor were they certified to drive a company vehicle during the period involved in this dispute.

The Organization recognizes that when the Claimants applied for the Welder positions they were not qualified on the Book of Rules and were not certified to drive a company vehicle. However, it asserts that they could have been assigned to these positions pending Book of Rules qualification and certification to drive a Conrail vehicle. This had been done on two other operating divisions of Conrail, according to the Organization.

Rule 3, Section 1, of the Agreement provides that “[I]n the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern” (underscoring added). Rule 3, Section 4(a), governs the filling of temporary vacancies. It provides, in pertinent part, “[W]hen furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employee in the seniority district shall be offered the opportunity to return to service . . .” (Emphasis added.)

The Board agrees with the Carrier that Rule 3 does not require it to recall employees from furlough pending qualifications for advertised positions or temporary assignments. The Carrier has the prerogative to do this if the circumstances warrant but it is under no contractual obligation to recall employees from furlough unless they are qualified for the position being filled.

Inasmuch as neither Claimant was qualified on the Book of Rules and were not certified to drive a Conrail vehicle they were not qualified for the Welder positions for which they submitted bids. Therefore, the Carrier had the right to recall junior employees from furlough who were fully qualified for the Welder positions.

Two previous Awards between these same parties have ruled that Conrail is not required to consider a senior Maintenance of Way employee for a vacant position if that employee is not qualified on the Book of Rules. See Third Division Awards 29482 and 31826. Because those decisions are analogous to the claim presently before the Board, we feel compelled to follow them.

For all the foregoing reasons the claims 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.

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

Dated at Chicago, Illinois, this 26th day of April, 2001.