

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35430
Docket No. MW-33001
01-3-96-3-392**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 awarded a cook position on the A-B-H TP-201 Gang to Mr. K. A. Crilley effective March 20, 1995, instead of Mr. L. A. Harlan (System Docket MW-3848).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. A. Harlan shall be ‘ . . . compensated for all time earned by Mr. Crilley since March 20, 1995, so as to be made whole, and Mr. Harlan should be placed on this position as soon as possible, plus his records should reflect that he actually worked these days for reasons of all credits and benefits.’”**

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 instant claim arose when Mr. Crilley was deemed to be an automatic bidder for the cook position in dispute. Although Crilley was senior to the Claimant, the Organization asserted that he should not have had automatic bidding rights on the position. The cook position was in Work Zone 2 and Crilley was furloughed from Work Zone 4. To bolster its assertion, the Organization produced a copy of the 1994 seniority roster. The roster showed Crilley with a Zone 4 designation.

The Carrier asserted that Crilley had properly changed his work zone designation to Zone 2 within ten days of his furlough date. In support of this assertion, the Carrier produced a copy of a WFIS report that showed Crilley to have a Zone 2 designation prior to the advertising of the disputed cook position. Accordingly, Crilley was properly deemed to be an automatic bidder on the position, and his greater seniority entitled Crilley to the award.

The Organization requested a copy of Crilley's letter requesting to change his work zone designation from 4 to 2. The Carrier did not respond to the request. This raises questions about the credibility of the Carrier's assertion that Crilley properly requested the work zone change.

A statement from Mr. Crilley would have resolved all questions about whether he did or did not request a change in his work zone designation. Unfortunately, neither the Organization nor the Carrier provided such a statement. Thus, we are left with a conflict in material fact: Were Crilley's automatic bidding rights in Work Zone 2 or 4?

It is well settled that we have no authority to resolve conflicts in essential facts. As a result, when confronted with an irreconcilable conflict in material fact, we have no choice but to dismiss the claim. It matters not that there are credibility concerns surrounding the Carrier's evidence. Credibility is merely another question of fact that we have no power to resolve.

Given the state of the evidentiary record, we must dismiss the claim.

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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 26th day of April, 2001.