

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35643
Docket No. MW-34227
01-3-97-3-788**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised an MW repairman position, headquartered at MW Repair Shop, Bear, Delaware, within Advertisement No. 005-MWS1-0196 dated January 22, 1996 with the requirement ‘must possess overhead crane repair certification’ (System File NEC-BMWE-SD-3688 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, the MW repairman position advertised in Advertisement No. 005-MWS1-0196 shall be abolished and readvertised without the overhead crane repair requirement, in accordance with all other advertisements to this class.”

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.

This claim protests the Carrier's inclusion of a requirement for overhead crane repair certification in a BMW Repairman position at the Repair Shop in Bear, Delaware, in Advertisement No. 005-MWS1-0196 dated January 22, 1996, and requests the abolishment of the position and its re-advertisement without that requirement, which the Organization argues has never been a part of the Repairman position. On the property the Carrier contended that it had the managerial right to determine qualifications for positions, and that it offered training leading to certification to Repairman prior to the posting.

The record reveals that the advertisement in question was specifically canceled, that various Organization representatives received copies of such cancellation as well as a new posting dated January 29, 1996 in Advertisement 006-MWS1-0196 for a BMW Repairman at the Roadway Equipment Shop in Wilmington, Delaware. Such posting did not contain the overhead crane repair certification requirement being protested in this claim. Although not specifically addressed prior to docketing the case with the Board in October 1997, the Carrier wrote to the General Chairman on November 20, 1997 stating these facts, including the pertinent documents for review, and contending that the claim was moot.

A careful review of the record convinces the Board that the claim is moot and must be dismissed. The record supports the conclusion that the protested advertisement was canceled, and the position re-advertised without the certification requirement a week after the original posting. Thus, the specific remedy requested herein has already been voluntarily complied with by the Carrier. The fact that the repair shop was moved from Bear to Wilmington, Delaware, pursuant to a Special Agreement between the parties at this time accounts for the different locations in the postings and possibly explains why some confusion may have occurred on the Organization's part. In any event, the issue has been resolved and the claim is moot.

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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 28th day of August, 2001.