

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36020
Docket No. MW-34484
02-3-98-3-118**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 failed to award Mr. J. Destefano any of the B&B mechanic or B&B foreman positions, which were advertised in Bulletin No. 395 under date of June 14, 1996 and to which he properly submitted bids for, as required by Rule 3 (System docket MW-4555).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Destefano shall be awarded:**

“* the B&B mechanic rate for position 05-030-689133470 account he was not afforded the opportunity to give a reasonable demonstration. He should have been awarded pending qualification.**

Claimant is claiming \$15.20 at the time of one-half rate from July 1, 1996 through August 5, 1996 eight (8) hours for each date including any overtime associated with the position, as per Rule 26(f) until claimant is permitted to work 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.

Claimant J. J. Destefano had Trackman seniority dating from November 23, 1976 and established seniority as a Class 3 Machine Operator dating from October 12, 1977, Class 2 Machine Operator seniority dating from April 16, 1979 and Camp Car Attendant and Camp Cook seniority dating from July 21, 1980. At the time of the incidents in question, the Claimant was assigned and was working as a Camp Cook on the Pittsburgh Seniority District.

The facts in this matter appear to be uncontested. Under date of June 14, 1996, the Carrier issued Bulletin No. 395. Pursuant to that bulletin, the Claimant submitted a bid on a B&B Foreman and seven B&B Mechanic positions advertised in that bulletin. The Claimant's application included a letter specifically requesting to demonstrate his ability to qualify for all jobs on which he was bidding. On June 25, 1996, the Carrier issued Award Bulletin No. 395 in which it awarded all positions to senior applicants with the exception of position 05-03006891-3348-8 (a B&B Mechanic) located at Conway, Pennsylvania. Even though the Claimant had bid on and specifically requested to demonstrate his qualifications for this position, the Carrier indicated that this position was not awarded and that there were "No Qualified Bidders."

We note that the Organization made its initial claim for the B&B Mechanic position 05-030-6891-3347-0. However, D. M. Chick had been awarded this position. On its subsequent appeal, apparently realizing that it had mistakenly filed for a position which had been properly filled, the Organization changed its claim for position 05-030-6891-3348-8, which had not been filled. Finally, in its listing letter with the Board, the Organization reverted to its original contention that the Claimant should have received the position awarded to D. M. Chick.

According to the Organization, the Claimant was willing, available, and able to fulfill the job of Mechanic. The Organization takes the position that the Carrier violated the Agreement in this case when it did not award the position to the Claimant. According to the Organization, the Claimant was the only applicant for the position and should have been given the opportunity to demonstrate qualifications for the B&B Mechanic position. According to the Organization, Rule 3, Section 2 requires:

"In making applications for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be

required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position.”

Here, the Organization claims that the Carrier was required to award the position to the Claimant and allow him to qualify for the position. Further, the Organization claims that there is a past practice which entitled the Claimant to the position. In 1984, the Carrier awarded a Welding position to a Trackman on the basis of his BMW seniority. According to the Organization, that practice requires that the Claimant obtain the position in the instant case.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. First, the Carrier contends that the claim is invalid for procedural reasons. The Carrier contends that the claim is barred because it represents a “pyramid” of a separate claim submitted on the Claimant’s behalf on the same issue. Second, the Organization improperly amended its claim on appeal to the Senior Director of Labor Relations and finally, the General Chairman improperly submitted a letter following the letter of denial in which the General Chairman advanced a new argument that had never been discussed on the property. Finally, even beyond the procedural argument, the Carrier takes the position that the Claimant had no B&B seniority and was therefore an applicant and not a bidder. As such, he had no right to demand the position in question.

After a review of the evidence, the Board finds that we do not have jurisdiction to determine this matter. On a procedural ground, it is clear, as the Carrier contends that the initial claim by the Organization was for the position 05-030-6891-3347-0. However, this position was filled by a senior qualified bidder, D. M. Chick. Thus, this position had actually been properly filled. On appeal to the Senior Director, the General Chairman amended his claim to state that the Claimant should have been awarded a different B&B Mechanic position, 05-3-6891-3348-8 which the Carrier had elected not to fill because of a lack of a qualified bidder. Thus, the Organization attempted to modify the claim on the property. This is not permitted. As the Carrier contends, amending an appeal during the on-property proceedings is a fatal error, rendering the claim procedurally defective and requiring its dismissal by the Board:

Fourth Division Award 4867

“Under the provisions of the Railway Labor Act and the Rules of Procedure of this Board, the party presenting a dispute ‘must clearly state the particular question upon which an award is to be desired.’ When that is not done in the Statement of Claim as presented to this Board, we would be exceeding our jurisdiction by considering arguments which go beyond the Statement of

Claim. . . . We therefore dismiss this claim for lack of jurisdiction without reaching the issue. . . .”

Third Division Award 17512

“Under the Railway Labor Act, and our rules of procedure, the only question properly before us is that presented in the formal statement of claim. . . . See also Third Division Awards 11006, 15523, 19790, 32477 and 34228”

In this case, the Organization mistakenly filed its initial claim for a position which had already been filled (05-030-6891-3347-0). Thus, this is the claim that the Organization must live with. Based on the precedent discussed above, the Organization cannot then materially change its claim at a later point. Here, the Organization urges the Board to award a different position (05-030-6891-3348-8) to the Claimant. Because that is not the position identified in the initial claim, we do not have jurisdiction to determine whether the Claimant did not properly receive a position and may not reach the merits of this case.

We do not have jurisdiction over this matter and we therefore must dismiss for lack of jurisdiction.

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 21st day of May, 2002.