

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36046
Docket No. MW-35840
02-3-99-3-843**

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 Employees
(National Railroad Passenger Corporation
(Amtrak - Northeast Corridor)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to allow Ms. J. Williamson to fill a repairman vacancy beginning April 20, 1998 through June 8, 1998 (System File NEC-BMWE-SD-3899 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Williamson shall now be compensated at the respective repairman straight time rate of pay for the period of April 20, 1998 through June 8, 1998 and she shall be compensated at the respective repairman's time and one-half rate of pay for any overtime associated with such position during said period.”**

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 issue raised by this claim is whether the Carrier violated Rule 4 when it denied the Claimant the right to fill a vacancy of MW Repairman with the Track Laying System (T.L.S.) from April 20 to June 8, 1998. The Claimant was hired as a Trackman in February 1998 and was under her probationary period when she requested to fill the vacancy in question. The record reflects that the Claimant passed the MW Repairman test on her second attempt and was compensated for the hours she spent taking the tests. It is also conceded that she was awarded the MW Repairman position after doing so, effective May 18, 1998.

The basis for the Carrier's refusal to permit the Claimant to fill the vacancy prior to May 18, 1998 is its assertion that she was not qualified to hold the position because she could not produce the required tools for the job. In Manager Collins' July 28, 1998 denial of the claim, he states that both Pielli and Holbrook explained to the Claimant that she needed a chain wrench and to take and pass the qualifying exam, that upon her award of the position effective May 18, 1998 she was audited for tools and it was determined that she had not purchased a chain wrench, but that shortly after the audit she purchased the required wrench. The Carrier also included in its Submission to the Board the underlying statement of Senior Project Manager Pielli supporting such assertions, which the Organization contends was not exchanged on the property.

The Organization presented statements from the Vice Chairman, the Claimant and three Repairmen written in May 1999 concerning their knowledge of the Claimant's qualifications. The Claimant and Repairman Matthews attest to the fact that they reported to New Rochelle, New York, on April 20, 1998 with the Claimant's tools and tool boxes, which were transferred to the Carrier's support truck. The Claimant states that Repairmen Ives and Pikulak witnessed that she had all her tools that morning. Ives' statement says that he went over the tool list with the Claimant and that the Monday after she qualified as a Repairman she had all the tools on the list. Pikulak's statement affirms that the Claimant had all of the required tools in her possession when she filled the Repairman position.

The Organization argues that it properly rebutted the Carrier's bare assertion that the Claimant did not possess the required 11" chain wrench, which was the sole basis for the Carrier's position that she was not qualified to assume the vacancy. It notes that the Board may not consider facts and arguments not presented on the

property, which include Pielli's statement and the Carrier's argument that the Claimant has no demand right to the vacancy under Rule 4 as she did not have seniority in the class and it was up to the Carrier's discretion whether to fill the vacancy. The Organization contends that the Claimant's probationary status does not disqualify her from filling the vacancy. It asserts that although the Claimant's rate of pay was the same as that paid by the Repairman vacancy, it represented increased overtime opportunities for the Claimant which should be compensated by the Board.

The Carrier contends that the Claimant was not qualified for the Repairman vacancy, as required by Rule 4(e) because she did not possess the necessary tools until after she passed the exam and was awarded the position. It notes that the claim is excessive in that it requests pay for a time after the Claimant assumed the position on May 18, 1998 and asks for compensation at the overtime rate for work not performed. The Carrier argued before the Board that the Claimant had no demand right to the vacancy because she had no seniority in the class, it is within its discretion not to fill a temporary vacancy under Rule 4, and absent any evidence that it did so, there can be no violation of that provision.

The Carrier's argument that the Claimant had no demand right to fill the vacancy in issue under Rule 4 is a new argument not addressed on the property and cannot be considered by the Board. A careful review of the record properly before the Board convinces us that the Organization failed to sustain its burden of proving that the Claimant met the qualifications for the Repairman position prior to May 18, 1998. Regardless of whether Pielli's underlying statement was exchanged on the property, the Carrier's initial denial clearly set forth specific facts asserting that the Claimant did not obtain the required chain wrench until after she qualified for, and was awarded the position effective May 18, 1998. The statements submitted by employees almost one year hence did not provide contradictory evidence that she did possess the disputed wrench prior to the time she was awarded the Repairman position. Because the claim period, in effect, runs from April 20 to May 18, 1998, the Organization failed to show that the Claimant was qualified in all aspects for the vacancy she was seeking during that time period. As there is no dispute that the Claimant received the Repairman position she sought on May 18, 1998 and continued in it throughout the on-property handling of this case, the Organization established no loss of revenue to which the Claimant would be entitled, and the claim must be denied.

Form 1
Page 4

Award No. 36046
Docket No. MW-35840
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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 21st day of May, 2002.