

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36070
Docket No. MW-34871
02-3-98-3-589**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when a 1/C Maintainer position on Rail Unit #2 was advertised within Bulletin No. WE-6 and the Carrier failed to award the position to Mr. L. R. Marshall as required by Rule 3(b) and 3(c) (Carrier's File 8365-1-575).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. L. R. Marshall, who entered a bid for said position, shall be placed on the 1/C Maintainer's Roster with a seniority date of September 6, 1996.”**

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.

Under date of September 6, 1996, the Carrier advertised two First Class Work Equipment Maintainer positions on Rail Unit No. 2, to work under Track Supervisor J. E. Gasiacki at Detroit, Michigan, commencing September 23, 1996. Claimant L. R. Marshall and S. M. Ballard, both of whom were then working as Second Class Work Equipment Maintainers, were the only two applicants for the two First Class Work Equipment Maintainer positions. The Carrier properly awarded one of the 1/C positions to Ballard, but bypassed the Claimant and improperly assigned D. A. Edwards,

who failed to make application to fill either of the subject positions, to fill the second position as First Class Work Equipment Maintainer on Rail Unit No. 2.

In the original claim filed October 7, 1996, on behalf of Second Class Maintainer L. R. Marshall, the Organization asserted that the Claimant was improperly denied the position of First Class Maintainer on Rail Unit No. 2, citing Agreement Rule 3 Promotion to Official Position, as follows:

"Promotions (b)

Promotion shall be based on qualifications and seniority; providing qualifications are sufficient, seniority shall prevail, management to be the judge.

Employees promoted will be given a fair chance to demonstrate their ability to meet the practical requirements of the position, and failing to qualify within forty-four (44)* days shall return to their former position, seniority permitting. If not possible to return to their former position they shall exercise displacement rights in accordance with the principles outlined in Rule 5(a).

***Note:** Days as used in this paragraph has reference to days actually worked on the position."

During handling on the property, the Carrier acknowledged that the 1/C Maintainer's position had been improperly awarded to Edwards rather than to the Claimant, placed the Claimant in the 1/C position from October 15, 1996 until that position expired on November 8, 1996, and paid the Claimant the difference in pay between a 2/C Maintainer's position and a 1/C Maintainer's position (\$1,382.38) for the period from September 23 to November 8, 1996, the last day the Maintainer worked on Rail Unit No. 2. However, on grounds that the Claimant had not adequately demonstrated that he was qualified during the approximately 15 days that he had filled the position, the Carrier declined to grant that portion of the claim which sought for the Claimant a 1/C Maintainer's seniority date of September 23, 1996.

Careful review of the essentially undisputed evidentiary record persuades the Board that the Organization failed to carry its burden of proof that the Carrier's admitted violation of Rule 3 was not fully remedied during handling on the property and/or that the Carrier failed to give the Claimant a fair opportunity to demonstrate his qualifications and/or that the Carrier abused its vested managerial discretion to determine whether the Claimant demonstrated sufficient ability to meet the practical requirements of the position during the time he held the 1/C position in October-November 1996.

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 18th day of June, 2002.