

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36266
Docket No. MW-35681
02-3-99-3-618

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway
(former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe K. J. King to B&B Blacksmith position No. 62155 by Bulletin No. L-16 dated June 18, 1997 (with a report date of June 30 1997), instead of Mr. E. P. Weimer (System File T-D 1381-B/MWB 97-10-30AE BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. P. Weimer shall now be compensated ‘ . . . for the difference in pay between First Class Carpenter and Blacksmith for all time worked by Mr. King beginning on the report date of June 30, 1997 and continuing until such time as Mr. Weimer is properly assigned to the position of B&B Blacksmith. This claim also includes any overtime worked by Mr. King on this 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.

On June 4, 1997, the Carrier advertised a Blacksmith position that was to begin work on June 30. The position was awarded to K. J. King, a B & B Helper. The Claimant, a B & B Helper with greater seniority than King, also bid on the position but was not assigned. The Organization filed the instant claim, relying in large part on Rule 22 (A), which provides:

"A. Each new position or vacancy bulletin as provided in Rule 21 will be assigned to the senior qualified applicant who holds seniority on the seniority roster from which the position in question is filled and in the rank of that position.

In the absence of such applicants, the senior qualified applicant in the next lower rank and in succeeding lower ranks, if necessary on the same roster will be assigned."

The Carrier denied the claim on the basis that the position had been bulletined with the following qualification: "Applicants not holding Blacksmith seniority must have attended/successfully completed blacksmith training/testing program per notice of Feb. 12, 1987." The Carrier contended that the Claimant had not completed this training and therefore he was not qualified to be assigned the position. The Carrier further contended that King was the senior qualified applicant, and therefore he was properly awarded the job.

In further correspondence, the Organization pointed out that the Carrier had not re-advertised for the Blacksmith training since 1987 and thus the Claimant had been denied the opportunity to become qualified.

The Carrier responded that such argument constituted a modification of the original claim and that, in any event, the doctrine of laches should prevent the Organization from complaining about the failure to advertise Blacksmith training opportunities for the past ten years.

The Board carefully reviewed the somewhat unusual posture of this case. On its face, it seems clear that assignment to the Blacksmith position in question was predicated upon attendance and successful completion of a Blacksmith training program in accordance with a 1987 notice. Neither the Claimant nor King, the individual selected for

the position, attended the training offered in 1987, the record shows, and it has not been offered again.

It is equally clear from the record, however, that although the 1987 training information notice has been carried forward in successive job postings, it has not been applied as written since that time. Instead, the notice has served to inform employees of the qualification requirements for that job. After 1987, employees interested in working as Blacksmiths have satisfied the qualification requirement without attending a Carrier-sponsored course, by obtaining training elsewhere. The Organization concedes that King, the successful bidder in this case, was one of those employees.

Under these circumstances, we find that the variance between the posted bid qualifications and those actually considered for the position do not constitute a fatal flaw, particularly because no protest has been forthcoming from the Organization for over a decade. Moreover, there was no notice defect. Unlike Public Law Board No. 3460, Award 7, relied upon by the Organization, job bidders in this case had specific notice of the qualification requirement prior to bidding on the particular job involved.

The Claimant was not qualified for the Blacksmith position. In contrast to the junior bidder, the Claimant did not have the necessary qualifications in order to properly exercise his seniority for the bid job in accordance with Rule 22 (A). Accordingly, the claim must be denied.

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 28th day of October 2002.