

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36980
Docket No. MW-35928
04-3-99-3-945

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 list Mr. N. J. Parris' name on the 1998 Philadelphia Seniority District Plumber Roster and failed and refused to correct same (System Docket MW-5333).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. J. Parris shall have his plumber and plumber helper seniority date of March 12, 1997 restored to its appropriate standing on the applicable seniority roster.”

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.

After advertisement and bidding, the Claimant was awarded a Plumber's position at HQ Ann Street in Philadelphia, Pennsylvania, effective March 12, 1997. However, as stated in the relevant bulletin, the position was awarded to the Claimant "pend[ing] qual[ification]."

The Claimant worked in the Plumber's position for one day and was then displaced by a senior, qualified employee.

This claim arose when the Claimant's name was not listed on the Plumbers and Plumbers' Helpers seniority rosters with a seniority date of March 12, 1997 - the effective date he was awarded the Plumber's position.

Rule 3 reads, in relevant part, as follows:

"Section 5. Failure to qualify--Advertised position.

An employee failing to qualify for a position within thirty (30) days will not acquire seniority dating on the position for which he failed to qualify and will, within five (5) working days, return to his former position unless it has been abolished or filled by a senior employee, in which event he may exercise seniority."

Rule 4 - SENIORITY provides:

"Section 1. Seniority date.

- (a) Except as provided in Rule 3, Section 5, seniority begins at the time the employee's pay starts. If two (2) or more employees start to work on the same day, their seniority rank on the roster will be in alphabetical order. An employee assigned to a position of higher class than trackman will begin to earn seniority in such higher class and lower class on the same seniority roster in which he has not previously acquired

seniority from the date first awarded an advertised position in such higher class. He will retain and accumulate seniority in the lower class from which assigned. An employee entering service in a class above that of trackman will acquire seniority in that class from the date assigned to an advertised position and will establish seniority as of the same date in all lower classes on the same seniority roster."

The Organization argues that even though the Claimant only worked in the awarded Plumber's position for one day prior to being displaced, the language in Rule 4, Section 1(a) ("[a]n employee assigned to a position . . . will begin to earn seniority . . . from the date first awarded an advertised position . . .") requires that the Claimant begin to accumulate seniority from the date he was awarded the position. The Carrier argues that Rule 3, Section 5 and Rule 4, Section 1(a) must be read together and, because Rule 4, Section 1(a) states "[e]xcept as provided in Rule 3, Section 5. . . ." and Rule 3, Section 5 gives an employee 30 days in which to demonstrate his qualifications - which the Claimant did not do - the Claimant was therefore not entitled to effective date seniority as required by Rule 4, Section 1(a).

The Organization has the burden of proof. The Claimant was awarded the Plumber's position effective March 12, 1997, but that award was "pending qualification." The record does not show that the Claimant demonstrated his qualifications for the job in the one day he worked. The condition precedent for the awarded position was "pending qualification." The Claimant took the position with that condition. Under the circumstances, because this record does not show that the Claimant demonstrated his qualifications for the position, he is not entitled to a seniority date provided by operation of Rule 4, Section 1(a) when he only worked in the position for one day.

In order to avoid the consequences of Rule 4, Section 1(a) in this case, the Carrier was not obligated to take some affirmative action to disqualify the Claimant from the Plumber's position prior to his displacement as argued by the Organization. Rather, because the awarded position was "pending qualification," it was the Claimant's obligation to first show that he was qualified for the position. The outcome of such an interpretation as urged by the Organization may result in employees being more quickly disqualified from awarded positions when it looks

like displacements may occur, rather than allowing employees more time to demonstrate their qualifications for better positions.

Special Board of Adjustment No. 1109 cited by the Organization is not persuasive. In that case, the Rule was different. Rule 4(C) in that case provided that "[w]hen employees are promoted to a higher rank, their seniority in such rank will date from their assignment to a regular bulletined position . . . provided they are not returned to their positions within the first thirty (30) calendar days on account of lack of ability to perform the work. . . ." There, by Rule, employees got the seniority date from the effective date of assignment unless the Carrier first met its affirmative obligation (" . . . provided they are not returned to their positions . . . on account of lack of ability to perform the work . . .") to disqualify the employee. That is not how the language reads in this case. Here, a fair reading of Rule 3, Section 5 and Rule 4, Section 1(a) shows that, particularly in a case where the position is awarded "pending qualification," because Rule 4, Section 1(a) incorporates the qualification language in Rule 3, Section 5 and there is no evidence that the Claimant demonstrated his qualifications for the position in the one day he worked, the Claimant was not entitled to the effective date seniority the Organization seeks on his behalf.

The Organization has not carried its burden of proof. The claim will 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 12th day of May 2004.