Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38248
Docket No. MW-37567
07-3-02-3-678

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to assign Equipment Operator R. Principato to the equipment operator (crane operator) position in Bulletin AS-9 dated October 5, 2001 and instead force assigned Mr. B. Raye to this position (Carrier's File MW-02-08).

(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Principato shall now be assigned to the Bulletin AS-9 position and compensated at the crane operator's rate of pay beginning October 8, 2001 and continuing and be allowed any rating that may be accrued with such 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 or about September 21, 2001, the Carrier bulletined a Crane Operator's position starting at Lincoln, Maine. On September 24, 2001, the Claimant submitted a bid for the job, which would have given him higher pay than his then position as an Equipment Operator in the Track Department. The Carrier did not award the Claimant the job, but instead "force assigned" B. Raye to the position. Raye had not bid for the position and was already working at the highest rated position in his job as a Tamper/Liner Operator.

On October 8, 2001, the Claimant submitted a claim in which he alleged that the Carrier had violated the Agreement by not awarding him the bulletined Crane Operator's position. The Carrier denied the claim on November 14, 2001. The Carrier pointed out that the "bids and awards" of the position at issue clearly stated that a successful candidate "must be qualified on American Crane." The Carrier stated that because the Claimant was not qualified on an American Crane, he was therefore not qualified to be awarded the position.

The Organization appealed the denial by letter of February 26, 2002. It noted that the Claimant had operated heavy equipment all of his railroad career, including a boom truck, and that he had a Commercial Driver's License. It also insisted that the Claimant should have been given an opportunity to qualify on the American Crane, rather than denied the position outright. The Organization further pointed out that Raye – the employee ultimately "force assigned" to the position – did not want the position to which he was assigned and did not appear on the Crane seniority roster, despite the fact that he was qualified to operate the American Crane.

The claim was subsequently progressed, including conference on the property on April 4, 2002, after which it remained in dispute.

The Organization argued that the Carrier's assignment violated the Agreement by not awarding the position in question to the Claimant who held

seniority as an Equipment Operator, and "force assigning" an employee who had no seniority on the Crane Operator roster. It further insists that the Claimant was entitled to an opportunity to qualify on the American Crane, but was deprived of that opportunity as a consequence of the Carrier's force assignment of Raye. Finally, the Organization insists, Raye did not want the position and did not bid on it, nor did he hold seniority on the Crane Operator roster. Thus, the position should rightly have been awarded to the Claimant.

The Carrier contends that it has the right to determine reasonable qualifications for employees for bulletined positions, particularly those involving operation of special equipment, such as the American Crane. It also contends that it is not relevant to this case that Raye was "force assigned" although he may have preferred not to have the position.

We concur with the Carrier's position. Nothing in this record suggests that the requirement that a successful bidder for the position in question be qualified on the American Crane was arbitrary or unreasonable. Furthermore, there is no evidence to indicate that the Carrier was obliged to allow an otherwise unqualified employee an attempt to qualify based upon his position on the Equipment Operator roster, when there was an already qualified employee available. Finally, it is immaterial to this matter whether the "force assigned" employee desired the job at issue. If Raye felt harmed by his forced assignment, the Organization might have filed a claim on his behalf, but it is not something the Board may appropriately take into consideration in this case.

The Board concludes, based on the foregoing, that the Carrier did not violate the Agreement and 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 18th day of July 2007.