

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41158
Docket No. MW-41435
11-3-NRAB-00003-100357**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)
(– Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. A. Piatek to displace junior employee J. Carr on a vacant Lineman/HRO position on Gang P-254 at Sunnyside Yard, New York on August 28, 2009 and continuing (Carrier’s File NEC-BMWE-SD-4881 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Piatek shall now ‘. . . be permitted to immediately displace Mr. Carr on the Lineman/HRO vacancy that Mr. Carr is presently filling in Gang P-254, Sunnyside, NY upon the Division Engineer’s receipt of this Claim. Additionally, the Union would require Mr. Piatek be compensated any pay rate difference, shift differentials, CDL differentials, or any inequity in pay junior employee, Jason Carr has enjoyed since August 28, 2009 and continuing until this matter is resolved including overtime made by Mr. Carr while filling the vacancy.’”**

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 claim, dated September 2, 2009, involves the Carrier's decision not to allow the Claimant to displace a junior employee occupying the position of Lineman/Hi-Rail/Catenary Car Operator (Lineman/HRO). Because the Claimant is the senior employee, the Organization asserts he can exercise his seniority under Rule 4(b) to displace the junior employee. According to the Carrier, the Claimant was not qualified for the disputed position, so he could not displace the junior employee.

The progression of the claim on the property reveals it was processed in the usual and customary manner, including placement before the highest officer of the Carrier designated to handle it. Following a conference discussion on February 18, 2010, the claim is now properly before the Board for adjudication.

The record reveals that the junior employee filled one of two vacant Lineman/HRO positions from April 13 until July 29, 2009 when it was awarded to a senior qualified employee. The Claimant did not bid for the vacant position at that time.

During the three months (April 13 – July 29) that the junior employee was working the vacant position prior to its award to the senior qualified bidder, the junior employee not only displayed proficiency operating the Catenary Vehicle, but also qualified on all physical characteristics on the territory for the Lineman/HRO

position, but for a portion between “A” Tower and Bergen. When the senior qualified employee was awarded the Lineman/HRO position on July 29, 2009, the Carrier placed the junior employee on the remaining vacant Lineman/HRO position.

When the junior employee was placed on this position on July 29, 2009, the Claimant did not bid or exercise his seniority under Rule 4(b). About one month later however, on August 28, 2009, the Claimant informed his Supervisor that he was exercising his seniority under Rule 4(b) to displace the junior employee from the Lineman/HRO position.

Rule 4(b) provides ‘ . . . an employee so assigned may be displaced by a senior employee working in a lower rated position or in the same grade or class, provided displacement is made prior to the starting time of the assigned tour of duty by notice to the Foreman or other officer in charge’

When the Claimant notified his Supervisor on August 28, 2009 of his intention to use Rule 4(b) to displace the junior employee, the two employees (the Claimant and the junior employee) were not equally qualified for the Lineman/HRO position. As noted in the record, the junior employee operated the Catenary Vehicle and, as of July 29, 2008, he was sufficiently qualified on the physical characteristics of the territory. The Claimant, on the other hand, was not qualified on the physical characteristics of the territory.

Seniority governs in the assignment of an employee to a position when, under Rule 1, the employee is sufficiently qualified to be assigned to the particular position. Third Division Award 31998. Based on the record, the Board finds there is substantial evidence to support the Carrier’s decision that the Claimant was not sufficiently qualified for the vacant Lineman/HRO position so as to allow him to exercise his seniority under Rule 4(b) to displace the junior employee.

Accordingly, the claim is denied.

Form 1
Page 4

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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 November 2011.