

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42593
Docket No. MW-42709
17-3-NRAB-00003-140420

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe N. Parker to the electric welder position headquartered at Rigby Yard in Portland, Maine effective July 29, 2013 instead of senior employe M. Giguere (Carrier’s File MW-13-23).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Giguere shall be allowed ‘ . . . a seniority date of July 29, 2013 ahead of Mr. Parker (*should he become qualified in the position*) on the applicable Welder’s Roster and/or at the very least, employee Giguere be afforded the 30 days to show proficiency within the classification as outlined in Article 7 of the Agreement between Parties.’ (Emphasis in original).”

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 Claimant bid for the position of Electric Welder. The bid showed that a welding certificate and a DOT medical card were prerequisite qualifications for the position. The Claimant possessed neither a welding certificate nor a DOT medical card. The Carrier awarded the position to a junior employee bidder who did have a welding certificate and a DOT medical card.

Article 8.1 provides that: “In the assignment of employees to positions under this Agreement, qualification being sufficient seniority shall govern.”

Article 8.3(d) provides that: “Vacant positions will be awarded to the senior qualified employee bidding for same”

Article 7.1 provides that: “In making application for an advertised position or vacancy, or in the exercise of seniority, employees may be required to give a reasonable practical demonstration of their qualifications to perform the duties of the position. Employees will be allowed up 30 days to demonstrate sufficient qualifications.”

The words “qualification being sufficient” in Article 8.1, and “senior qualified employee” in Article 8.3(d) refer to prerequisite qualifications that meet the minimum requirements for an employee to be eligible to hold the position.

The words “practical demonstration of their qualifications to perform the duties of the position” in Article 7.1 refer to the ability of an employee – who already meets the prerequisite qualifications that one must have in order to be eligible for the position in the first place – to demonstrate that they can “do the job.” In other words, as ruled in on-property Public Law Board 5606, Award 8, between the same parties, “the referenced intent of the 30-day period contained in Article 7 is to allow an employee deemed qualified to demonstrate a capacity to fulfill the requirements of the position.”

An employee is not deemed qualified for a position if they do not have the prerequisite qualifications for the position. Article 7.1 does not provide a 30-day window to obtain prerequisite qualifications while occupying the position. The Claimant was not qualified to occupy the position for which he bid. Therefore, the Carrier was not in violation when it awarded the position to a qualified employee who was junior to the Claimant.

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 19th day of April 2017.