

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42887
Docket No. MW-43675
18-3-NRAB-00003-160468**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn 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 failed to award Claimant S. Taylor a Bridge and Building (B&B) Mechanic position in Waterville, Maine and instead assigned the position to junior employee P. Rancourt on November 21, 2014 (Carrier’s File MW-15-22 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Taylor must be allowed all time and compensation accrued and earned by junior employees who were allowed to work the subject B&B position from November 24, 2014 to January 5, 2015 and must be allowed holiday pay for November 27, 28, December 24, 25,31, 2014 and January 1, 2015 which the Claimant did not receive because he was in furlough status and not allowed to fill the B&B mechanic 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.

The Claimant has seniority in the Carrier's Bridge & Building (B&B) Sub-Department. After awarding the Claimant a B&B Mechanic's position on November 21, 2014, the Carrier revised the award and awarded the position to Mr. P. Rancourt, who was junior to the Claimant. Mr. Rancourt was later replaced by Mr. M. Giguere, who in turn was replaced by Mr. K. Bishop. All were junior to the Claimant. A timely claim was filed on his behalf.

The Organization contends that the award of the B&B Mechanic position to Mr. Rancourt violated the contract. Letters informing the Claimant that he had been disqualified from a B&B Foreman position after failing two B&B Foreman tests made no mention of the B&B Mechanic position. The Claimant remained a qualified B&B Mechanic, as there was no mention that the tests also applied to the Mechanic position when they were administered. The Carrier cannot change the disqualification after the fact. Because the Claimant's seniority rights were violated, he should receive payment equal to that given to the junior B&B mechanics who occupied the position and he should receive holiday pay lost because he was on furlough.

The Carrier asserts that the Organization has not proven the claim. At least twice in 2014 the Claimant failed the B&B test and therefore was not the senior qualified bidder for the disputed position, which was awarded to the senior qualified bidder. The February 10, 2014 disqualification letter stated that the Claimant was disqualified as a B&B Foreman, but the test he failed is also the test one must pass to qualify as a B&B Mechanic, as explained to the Organization. The wording of the letter does not allow the Claimant to qualify as a B&B Mechanic. Foreman was the position from which the Claimant was disqualified in February 2014. The correspondence relevant to Carrier claim No. MW-15-2 (Third Division Award

42888) is also relevant to the instant case and should be considered part of this record. The Carrier is not required to change qualifications or existing practices or validate the claim because of disagreement with the wording of the February 10, 2014 letter. PLB 5418 Award No. 23 supports the denial of the claim.

While the Carrier may be guilty of delivering two inartfully drafted letters to the Claimant, the Carrier is not guilty of violating the Agreement. While it would have been better in hindsight to have included in the February 4 and 10, 2014 disqualification letters to the Claimant the information that failure to pass the B&B test meant that he also had failed to qualify as a B&B Mechanic, that omission did not alter the basic fact that passing the B&B test was necessary to qualify as a B&B Mechanic. Surely it is obvious without the Board's observation that allowing unqualified B&B Mechanics to do the work could put Carrier employees and the traveling public at risk. The Claimant was not a qualified B&B Mechanic between February 10, 2014, when he failed the B&B test for the second time, and March 20, 2015, when he passed the B&B test and was requalified as a B&B Mechanic. Because he was not qualified as a B&B Mechanic during the November 27, 2014-January 5, 2015 period of the claim, his seniority rights were not violated. The Board has considered the awards provided by the Organization and finds them unavailing.

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 10th day of January 2018.