

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43073
Docket No. MW-44277
18-3-NRAB-00003-160634**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 to accept Claimant T. Tisdale’s bid application for the Niles B+ Relief Operator Position and instead awarded the position to junior employe J. Fonseca beginning on February 6, 2015 and continuing (Carrier’s File BMW-586 NRP).**
- (2) The claim as appealed by Second Vice Chairman J. Bainter on June 16, 2015 to Manager Labor Relations V. Guilian shall be allowed as presented because it was not disallowed by Manager Labor Relations V. Guilian in accordance with Rule 14.**
- (3) As a consequence of the violations referred to in Parts (1) and/or 2 above, Claimant T. Tisdale must ‘. . . be compensated for any and all straight and overtime hours at the B+ Relief Operator straight and overtime rates of pay worked by Johnny Fonseca beginning February 9, 2015 and continuing until such time as Claimant is allowed to work the position in question. We further request the Carrier immediately re-advertise and award the position of B+ Relief Operator. Finally, we request the Carrier compensate the Claimant round trip mileage (126 miles each way) from Niles, MI to Jackson, MI at the standard government mileage rate of \$.575 per mile and compensate the Claimant two (2) minutes per mile, round trip, (126 each way) each weekend beginning January 5,**

2015 for time and mileage spent driving from Nile (sic), MI to Jackson, MI and return until the Claimant is allowed to work the position in question.”

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the Agreement when it awarded the Niles B+ Relief Operator Position to a junior employee, instead of to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to timely disallow the claim, because the Carrier violated the Agreement when it failed to allow the Claimant to exercise his seniority, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Carrier properly awarded the position at issue to an employee other than the Claimant, because the Claimant was available to bid on the position at issue as he had committed to another year on the DynaCat Tamper contract position, because there were no extenuating circumstances that allowed the Claimant to vacate the DynaCat Tamper assignment, because the Carrier timely disallowed the appeal, because the Organization failed to meet its burden of proof, and because the requested remedy is unwarranted and unsupported by the Agreement.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the procedural argument raised by the Organization, and we find it to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights, including that the Carrier's denial was timely.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it did not allow Claimant Tisdale to move to Niles and subsequently awarded that position in Niles to a junior employee. Therefore, this claim must be denied.

The record reveals that the Claimant had been awarded a position working on the Jackson-based DynaCat Tamper in April of 2013. In November of 2014, the Claimant indicated that he would like to remain under contract to work the DynaCat for the period January 1, 2015, through December 31, 2015. The Claimant was then assigned to that contract position for the entire year of 2015.

Consequently, when the Claimant attempted to bid for a position in Niles in February of 2015, the bid was not accepted because the Claimant had already committed to work in the contract position on the DynaCat Tamper for the entire year. He may have wanted to change, but he had contractually agreed to stay on the other job for the entire year.

It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization has failed to meet that burden because the Claimant was ineligible to apply for the job that he was not allowed to bid on. Therefore, this claim must be denied.

AWARD

Claim denied.

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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 2nd day of May 2018.