

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44587
Docket No. MW-44440
22-3-NRAB-00003-170575**

The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

**PARTIES TO DISPUTE: (
(BNSF 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 grant a welder seniority date to Mr. D. Conkling of March 8, 2016 and when it failed and refused to properly compensate Mr. Conkling at the applicable welder rate for work performed on March 8, 9, 10 and 11, 2016 (System File C-16-P050-1/10-16-0207 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Conkling shall be provided promotion as a welder with an established seniority date of March 8, 2016 and he shall now be ‘... paid the difference in pay between the Structure Mechanic rate of pay and the Welder rate of pay, for the welding work that he performed on the above-cited claim dates, as settlement of this claim.’”**

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 record shows that the Claimant holds seniority within the Carrier's Maintenance of Way Department. At the time of this dispute, the Claimant was assigned as a Bridge and Building (B&B) mechanic working under the supervision of Supervisor Forshee. On March 8, 9, 10 and 11, 2016, the Claimant was directed by Supervisor Forshee to perform welding work of replacing four grates for water drains by welding 1" inch thick grate and fabricating it to make the grates more durable for heavy traffic at Mile Post 4.4 at shop extension building 5k in Kansas City, Kansas on the Emporia Subdivision. By letter dated April 19, 2016, the Organization filed a claim on behalf of the Claimant asserting that the Carrier violated the Agreement when it failed to promote the Claimant as a welder with an established seniority date of March 8, 2016. The Organization further asserted that the Claimant is entitled to the difference in pay between the B&B mechanic rate of pay and the welder rate of pay for the welding work he performed on March 8, 9, 10 and 11, 2016.

The evidence before the Board also demonstrates that the Carrier has indeed compensated the Claimant at the welder's rate of pay for the welding work he performed on the dates in question. Indeed, Appendix No. 16 of the parties' Agreement provides that

Effective October 1, 1976, B&B Mechanics and so-called B&B carpenters who are authorized to perform welding incidental to their normal duties, will receive (the B&B Welder's rate established by Memorandum of Agreement dated November 10, 1981). Employees performing such welding work for four hours or less on any one day will be paid the rate on an hourly basis with a minimum of one hour; for more than four hours in any one day, the rate will apply for that day.

However, the Organization's claim that the Claimant is entitled to be promoted to the welder classification, and given a seniority date within the same cannot be sustained. Nothing in Appendix No. 16 provides for such relief. The fact that the Claimant's supervisor may have asked "to see [Claimant's] welds in order ... to get [his] seniority rights" cannot supersede the authority of the Carrier to

establish qualifications for promotion. Rule 8 makes clear that “[a]pplicants for promotion may be required to pass oral and written examinations for the purpose of determining their qualifications, and demonstrate their ability to perform the work in the higher class to which promotion is sought.” Numerous awards from this Board have upheld the Carrier’s right to impose qualification requirements on promoted employees in order to ensure the safe operation of the railroad. The Organization has failed to demonstrate that the Claimant has satisfied the BNSF’s Welder’s Qualification Guidelines to justify his promotion in this case.

Accordingly, for all these reasons the claim is 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 29th day of October 2021.