

Award No. 7
Docket No. 7

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Western Maryland Railway Co.

STATEMENT
OF CLAIM:

Claim on behalf of R. H. Kallmyer for difference in pay from Welder Helper to B&B Welder rate from December 12, 1977 to January 31, 1978, account Mechanics performing welders duties while the claimant's position as Welder in the Work Equipment Shop at Maryland Junction, West Virginia was abolished.

FINDINGS: By reason of the Agreement dated June 14, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

The conference issue raised by Employees is similar to the same issue raised in Docket No. 2 and fully discussed in Award No. 2. For the reasons stated in Award No. 2, the conference issue is resolved in favor of the Carrier.

Claimant's position as a B&B Welder was abolished on November 22, 1977. He exercised his seniority and accepted a position as a Track Welder Helper at a lower hourly rate of pay. This claim was presented by Employees in a letter dated February 4, 1978. In that letter, Employees enumerate seven types of welding work performed by Work Equipment Shop Mechanic F. W. Leister since Claimant's position was abolished. Carrier denied the claim on March 21, 1978 because "Equipment Operators are required to weld". That letter also contained the following:

Investigation reveals that the equipment required no fabrication or alterations to the machinery --- simply repairs and replacements of damaged or worn parts were

involved. Also, welding by any one mechanic did not exceed four hours daily.

On appeal by letter dated April 28, 1978, Employees' District Chairman wrote as follows:

My personal visits to the Work Equipment Shop on December 12, 15, 22, 23, Jan. 10, 13, 17, 23, 27, 31 and my personal observations of the welding duties that were being performed dispute this denial. Also in as much as Equipment Operators are not involved in this claim it would have no bearing on this claim.

In again denying the claim on June 26, 1978, Carrier did so on two grounds. One, Claimant "could have exercised his seniority rights on a B&B Mechanic position on November 23, 1977". Second, Mechanics at this location have performed welding work in conjunction with repairing machines and replacement of parts. No fabrication or alteration of machinery welding was performed.

There is no rule which requires a displaced employee to bid to the highest rated available position for which he is qualified. Claimant's displacement was created when the Carrier abolished his B&B position. Carrier has the right to abolish a position providing, however, that the work of that position is not thereafter performed by an employee in another job classification or in another craft.

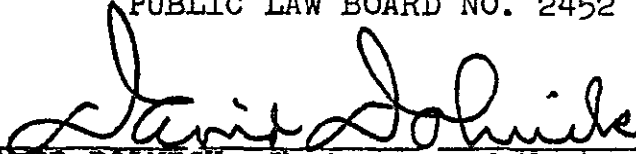
Nowhere in the record does the Carrier categorically deny the allegations in Employees' letter of April 28, 1978, that on the ten mentioned dates welding work was performed in the Work Equipment Shop, welding work which was performed by Claimant before his position was abolished. And it is unmistakable that the work intended to be identified was that of a B&B Welder. An allegation that mechanics "at this location have performed welding work" in conjunction with repairing machines and replacement of damaged or worn parts is not evidence, but a mere assertion.

For the reasons herein stated, the Board finds that the Carrier violated the Agreement, that welding work belonging to a B&B Welder was performed in the Work Equipment Shop by Mechanics on the claim dates and that the claim has merit.

AWARD

Claim sustained. Carrier is directed to pay the claim within thirty (30) days of the date hereof.

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DAVID DOLNICK, Chairman and Neutral Member


W. C. COMISKEY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980