

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 63

Case No. 63

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: K. R. Mason

**PARTIES TO DISPUTE:**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

**STATEMENT OF CLAIM:**

[AS STATED IN THE SUBMISSIONS AND NOT REPEATED HEREIN]

**FINDINGS:**

*Upon the whole record and all the evidence, after the submission of briefs and waiving oral argument, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.*

**DECISION:**

Job Award Protest Denied.

**OPINION**

This case arises from a claim filed in behalf of Mr. K. P. Padgett on the basis of allegations that a Bridge Inspector position that should have been awarded to Mr. Padgett

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was improperly awarded to Mr. J. M. Hollander.

The pertinent facts now follow.

Claimant Padgett entered the Carrier's service on the Southern Tier District, Binghamton, New York, on February 16, 1977. He acquired seniority in the B&B Mechanic class on the same date.

Mr. J. M. Hollander entered the Carrier's service in the Southern Tier District as a Trackman on August 18, 1975. He acquired seniority in the B&B Mechanic class on September 28, 1983.

On January 3, 1989, Claimant Padgett was furloughed due to force reductions.

Also on January 3, 1989, the Carrier advertised a Bridge Inspector position in Binghamton, New York, but no employees on the Bridge Inspector seniority roster bid for the position.

Effective January 25, 1989, the Bridge Inspector position was awarded to Mr. J. M. Hollander, a Scale Inspector, on the basis that he was the qualified bidder with the earliest BMWSE seniority.

\* \* \* \* \*

The Organization submits that under Rules 1, 3, and 4 of the Agreement, Claimant Padgett was an "automatic bidder" for the Bridge Inspector position, that seniority within the Bridge and Building Department controls the awarding of the position, because the Bridge Inspector class is part of that department, and that the Claimant should have been awarded the position, rather than Mr. Hollander, because Mr. Hollander's seniority as a

B&B Mechanic, dating from September 28, 1983, made him junior to the Claimant.

The Carrier submits that the Agreement does not address the manner in which advertised positions must be filled when none of the applicants possess seniority applicable to the class of the position to be filled, and that the cited Rules did not require the Carrier to restrict its selection process to the employee holding superior seniority as a B&B Mechanic within the B&B Department. The Carrier also submits that by letters dated November 12, 1982, and May 2, 1984 (Carrier Exs. 8 & 9, respectively), the Carrier's Senior Director informed the Organization's representatives that where qualified bidders exist, who do not possess seniority applicable to the position to be filled, the Carrier will make its selection based on the earliest BMW seniority date. The Carrier also asserts that Claimant Padgett was not an automatic bidder because he did not possess seniority applicable to the Bridge Inspector position.

\* \* \* \* \*

From review of the whole record the Board concludes that the record does not support the Organization's assertion that the Bridge Inspector vacancy comes under the Bridge and Building Department and that, therefore, the Agreement required the Carrier to restrict its selection process to the employee holding superior seniority as a B&B Mechanic within the B&B Department, which, in turn, required the Carrier to select Claimant Padgett over Mr. Hollander for the Bridge Inspector position.


The Board further concludes and finds that, as stated by Carrier, the herein situation is not covered by the Agreement. Given this finding, the Carrier's

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communications to the Organization's representatives by letters dated November 12, 1982 and May 2, 1984, become significant. The procedures set out in this correspondence were reasonable, fair, and not inconsistent with the Agreement Rules; the Organization, so far as the confronting record shows, did not suggest consideration of any alternate procedures.

The Board notes, finally, that Claimant Padgett was not an "automatic bidder" for the Bridge Inspector position because the pertinent language in Rule 3 (c) makes a furloughed employee an automatic bidder only for advertised positions "...for which he has seniority..." The record shows that Claimant Padgett, like Mr. Hollander, did not possess seniority for the advertised position of Bridge Inspector.

In view of the foregoing, and based on the record as a whole, the Board finds that the record does not support the claim and, therefore, the claim will be denied on that basis.

A handwritten signature in cursive script, reading "Fred Blackwell", written over a horizontal line.

Fred Blackwell  
Chairman/Neutral Member  
Public Law Board No. 3781

July 20, 1994

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AWARD

The record does not support the claim and, accordingly, the claim is hereby denied.

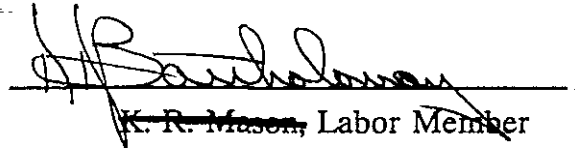
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Chairman/Neutral Member



J. H. Burton, Carrier Member



~~K. R. Mason~~, Labor Member

Executed on 2-8-95, 1994

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