

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 69

Case No. 69

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 February 5, 1993 hearing in Philadelphia, Pennsylvania, 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:

Claim that Carrier violated the Agreement is sustained. The original claim did not request compensation for Claimant and none is allowed.

OPINION

The question presented by the record is whether the Carrier violated the Agreement by not awarding an advertised Structural Welder position to the Claimant, who

FRED BLACKWELL
ATTORNEY AT LAW

P.O. BOX 6095
WEST COLUMBIA,
S.C. 29171
(803) 791-8086

Public Law Board No. 3781 / Award No. 69 - Case No. 69

was the senior bidder on the position and who was found not qualified for the position because he had not been certified under the Carrier's annual certification test for Structural Welders.

The pertinent facts on the claim, which arose in June 1989 on the Toledo Seniority District, Dearborn Division, now follow.

The Claimant, B&B Mechanic P. Rolio, established seniority in the welder classification on May 2, 1977. When the instant claim arose in June 1989, the Claimant was employed as a B&B Foreman at Toledo, Ohio. He had previously held positions as Structural Welder, but, in April 1989, there were no welder positions on the Toledo Division. Prior to April 1989, the welding work for the B&B Department on the Toledo Division was performed by the B&B Foreman.

In April 1989, while the B&B Foreman was on leave, the Claimant was asked to take the annual Welders Certification Test scheduled for April 10 and 11, 1989. The Claimant wrote to his supervisor, declining to take the test and stating that: *"If I were a welder I would be glad to take a test but I do not wish to weld as a mechanic as welders and mechanics are on separate rosters and that would be crossing crafts."* His letter closed by making reference to Rule 3, Section 2, of the Agreement and quoting its text.

Prior to this letter by Claimant, the Claimant's supervisor wrote a April 12, 1989, letter stating that the Claimant had said his reason for not taking the test was that he *"did not want to weld anymore"* and that the Claimant's not taking the annual test *"may affect"* your standing as a qualified bidder for future welding positions.

FRED BLACKWELL
ATTORNEY AT LAW

P.O. BOX 6085
WEST COLUMBIA,
S.C. 29171
(803) 791-8086

Public Law Board No. 3781 / Award No. 69 - Case No. 69

On May 25, 1989, a Structural Welder position in Toledo was advertised for bid. The Claimant was the senior bidder on the position, but the Carrier rejected his bid because he had not renewed his Structural Welder Certification in the previous month when the annual certification was offered.

* * * * *

The Organization submits that the claim should be sustained because, notwithstanding that Claimant had not taken the annual certification test in April 1989, the Carrier should have tested him under Rule 3, Section 2, of the Agreement, which provides that an applicant for an advertised position will be permitted to give a practical demonstration of his qualifications to perform the duties of the position.

The Carrier submits that the claim should be denied because the Claimant had opportunity to take the annual welder certification test, but refused at his own peril, and that Rule 3, Section 2, of the Agreement did not supersede the Carrier' Annual Welding Certification Requirement.

* * * * *

The Claimant notified Carrier in advance of the May 25, 1989, advertisement of the Structural Welder position that even though he had not taken the annual welder certification test, he was prepared to exercise his rights to be tested on his qualifications on a future advertisement of a Structural Welder position. The Carrier should have honored the Claimant's right to a Rule 3, Section 2, test and the Carrier's failure to do so violated the Agreement.

FRED BLACKWELL
ATTORNEY AT LAW

P.O. BOX 6095
WEST COLUMBIA,
S.C. 29171
(803) 791-8086

Public Law Board No. 3781 / Award No. 69 - Case No. 69

The Carrier correctly states that Rule 3, Section 2, does not control the Carrier's annual certification test. However, neither does the annual test control the Rule 3 test. The two tests exist independently of one another and even though the Claimant's passing the annual test would have obviated his need to take a test under Rule 3, Section 2, the fact that Claimant did not take the annual test had no affect on his right to a Rule 3, Section 2, test after a Structural Welder position was advertised.

Claimant's right to a Rule 3, Section 2, test on his qualifications for the advertised position was clear cut. Such right was not annulled or abolished by the existence of the annual certification test, and the Carrier's failure to allow Claimant to test under Rule 3 for the subject position violated the Agreement.

In conclusion it is noted that the ruling of this Award is limited to the rights of Claimant Rollo, although the Organization contended on the property that the Carrier should have offered the Toledo Division B&B Welders the opportunity to take the annual welder certification test. This contention is not developed in the Organization's submission and no information to validate the contention is contained in the record. Accordingly, this Award makes no ruling on this contention.

In view of the foregoing, and based on the record as a whole, the claim will be sustained as hereinafter provided.

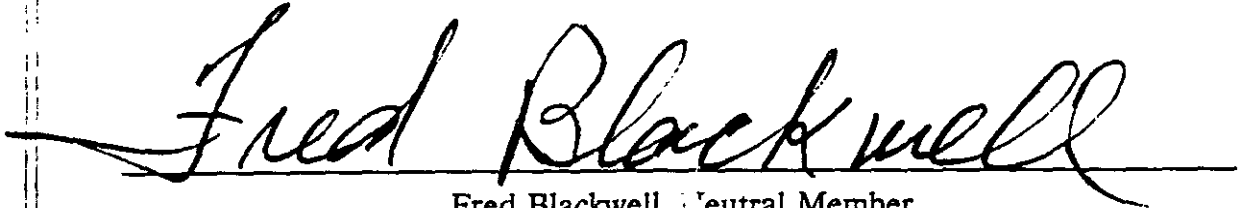
AWARD:

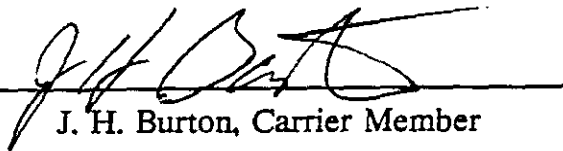
The evidence in the record as a whole established that the Carrier violated the Agreement and accordingly, the claim is sustained as follows:

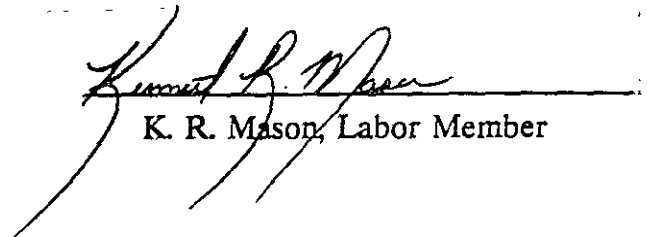
Public Law Board No. 3781 / Award No. 69 - Case No. 69

1. The Carrier violated the Agreement by not allowing Claimant Rollo an opportunity to test for the advertised welder position pursuant to Rule 3, Section 2, of the Agreement.
2. Compensation for Claimant was not requested in the initial claim and none is allowed.
3. The Organization's reference on the property to the Carrier's failure to offer the annual welder test to the Toledo Division B&O Welders is disposed of as per the Opinion.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.


Fred Blackwell, Neutral Member


J. H. Burton, Carrier Member


K. R. Mason, Labor Member

Executed on 5/20, 1993

D\CONRAIL\3781\69-69.415

FRED BLACKWELL
ATTORNEY AT LAW

P.O. BOX 6095
WEST COLUMBIA,
S.C. 29171
(803) 791-8086