

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 43

Case No. 43 (79)

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-1799) that:

- (a) The Carrier has violated the current Schedule Agreement, as amended, particularly Rules 3, 4, and 40, when the position of Bridge and Building Plumber 106 at Pitcairn, Pennsylvania, was awarded to T. J. Koessler instead of senior applicant and Claimant in this case, S. D. Ferris.
- (b) Claimant S. D. Ferris, a vehicle operator, shall be granted a seniority date as a plumber on the B&B Plumber Roster, Pittsburgh Seniority District, and paid the difference in the rate of pay between a vehicle operator and plumber, including all overtime granted to the plumber position in Gang 106, commencing on February 28, 1985, and continuing until the Claimant was granted a leave of absence as provided for by Rule 7 of the collective bargaining agreement.

FINDINGS:

Upon the whole record and all the evidence, after March 20, 1989 hearing in Washington, D. C., 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.

OPINION

The Claimant asserts that the Carrier improperly awarded

an advertised Plumber's vacancy to junior employee Koessler, whereas the Carrier should have awarded the position to the Claimant on overall seniority since neither the Claimant nor Mr. Koessler held seniority in the Plumber's class at the time in question; that the Carrier should have, but did not, treat the Claimant's application for the Plumber's position as a Rule 3, Section 2. request to demonstrate his qualifications to perform the position; and that the Carrier's actions in these respects were violative of the applicable agreement.

The Carrier asserts that Mr. Koessler was found qualified for the Plumber vacancy on the basis of his having been upgraded to plumber work on several prior occasions; that the Claimant made no request to be allowed to demonstrate his qualifications to perform the Plumber position; and that no agreement violation occurred.

After due study of the whole record, inclusive of the submissions presented by the parties in support of their positions in the case, the Board concludes that the claim is not supported by the record and hence must be denied. More specifically, the Carrier's information about Mr. Koessler's prior upgrade to plumber work is sufficient to support the Carrier's treatment of this employee as qualified for the position. In addition, the Board has considered but finds no merit in the contention that the Carrier should have construed the Claimant's job bid, in combination with his prior work experience, as a Rule 3, Section 2. request to

demonstrate his qualifications for the Plumber position. Since the text of Rule 3, Section 2. contemplates a "written request" by the employee for the opportunity to make such demonstration, and since no such "written request" is shown of record, it cannot be said that the intended requirement of Rule 3, Section 2., has been met. For similar rulings see Third Division Award No. 27631 (11-23-88) and Award No. 14 (05-28-86) of this Board, Public Law Board No. 3781.

Accordingly, on the whole record, the claim cannot be said to be meritorious and hence it will be denied.

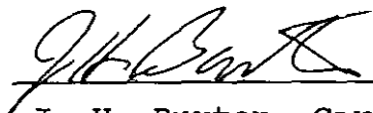
AWARD:

Claim denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



W. E. LaRue, Labor Member

Executed on April 26, 1990

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