

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 91

Case No. 91

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: D. D. Bartholomay

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (MW-1322) that:

1. The Agreement was violated when the Carrier failed to accept B&B Mechanic R. L. Williams' application for the structural welder position on B&B Advertisement Number 05 dated January 29, 1990.
2. As a consequence of the aforesaid violation, B&B Mechanic R. L. Williams '...should be compensated for all lost wages commencing from the date of February 8, 1990 at the Structural Welders rate of pay for ten (10) hours a day Monday through Thursday and to continue until the Claimant is qualified and or not qualified at which time Rule 3 section 5 will apply. Claimant should also be credited for all days to show as time worked to apply to all applicable credits.'

FINDINGS:

Upon the whole record and all the evidence, after hearing in the Carrier's Office, 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 Denied.

FRED BLACKWELL
ATTORNEY AT LAW

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(301) 977-5000

OPINION

This dispute arises from a claim filed on March 9, 1990, on behalf of Claimant R. L. Williams, on the basis of allegations that the Carrier violated Rule 3, Section 2, of the 1982 Agreement when it failed to approve the Claimant's application for a Structural Welder position, advertised in Bulletin No. 05, dated January 29, 1990 with headquarters at Buffalo, West Virginia.

The pertinent facts are that the Claimant applied for the disputed position of Structural Welder when it was advertised on January 29, 1990, by Bulletin No. 05. By bulletin dated February 8, 1990, the Carrier gave notice of its determination that there were no qualified bidders for the position. On February 12, 1990, the position was re-advertised and on February 22, 1990, the position was awarded to another Employee who was deemed qualified to perform the duties of the position.

In these circumstances the Organization asserts that the Carrier's denial of the Claimant's application was improper because, in two (2) prior instances, the Carrier has allowed Employees to qualify as Structural Welders after being assigned to a Welder position, and because the Claimant requested in writing that he be allowed to demonstrate his ability to perform the duties of the Structural Welder position as per Article 3, Section 2, of the parties' Agreement.

The Carrier submits that its denial of the claim was proper because the Carrier is not obligated to award positions to Employees who lack the requisite qualifications to perform the duties of the position, and that the Claimant did not make a written request,

under the provisions in Rule 3, Section 2, of the Agreement authorizing same, to be allowed an opportunity to give a reasonable, practical demonstration of his qualifications to perform the duties of the position in dispute. The Carrier also makes a procedural objection that the Organization did not submit for handling on the property the document proffered in the Organization's submission, to prove the fact that Claimant requested in writing to be allowed the opportunity to demonstrate his ability to perform the duties of the welder position, Organization Exhibit B, and that said Exhibit B is therefore barred from consideration by the Board in the determination of the issue in the instant proceeding.

Rule 3, Section 2 of the 1982 Agreement, in pertinent part reads as follows:

"Rule 3 - Selection of Positions

Section 2. Qualifications for positions

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

* * * * *

From full review of the whole record,¹ the Board finds that the claim is not supported by the requisite record evidence and accordingly, the claim will be denied for want of proof.

The text of Rule 3, Section 2, of the Agreement contains no explicit requirement

¹ All prior authorities submitted for the record have been considered and analyzed in arriving at this decision.

that allows an Employee to qualify as a Welder after being assigned to a Welder position, and the text of the rule contains no language which could be so construed. Further, the two (2) cited instances, in which Employees qualified after being awarded Welder jobs, are insufficient to establish a procedure that modifies the text of the rule so as to create an Employee right to qualify as a Welder after being assigned to a Welder position.

The Board further finds valid the Carrier's objection to the consideration in this proceeding of Organization's Exhibit B, on the ground that such exhibit was not handled on the property. The text of Exhibit B reads as follows:

"I R. L. Williams request to be qualified for a Structural Welder as with Rule 3 Section 2 qualification for position #05."

The statement bearing the Claimant's signature is not dated. It had not been submitted to the Carrier when the Carrier's highest Officer denied the claim by letter dated December 12, 1990; this letter expressly asserted that *"there has been no showing that Mr. Williams made a written request other than the bid submitted for the welder's position."* (CX 4) The Organization's December 17 response to the Carrier's final denial of the claim, noted an intent to advance the claim to a Public Law Board, but made no reference to Exhibit B. On the basis of this evidence, the Board can but find that Exhibit B was not handled on the property and thus cannot be considered by the Board in the determination of the confronting claim.

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

denied for lack of record support.²

A large, stylized handwritten signature of Fred Blackwell in black ink, written over a horizontal line.

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

September 16, 1997

² The references in the Carrier's submission to the Claimant being given a welding test in June 1990, have been found not relevant to the determination of this dispute.

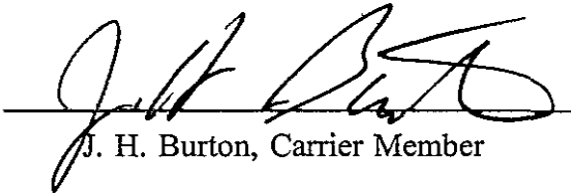
AWARD

The Carrier did not violate the agreement. Accordingly, the claim is hereby denied for lack of record support.

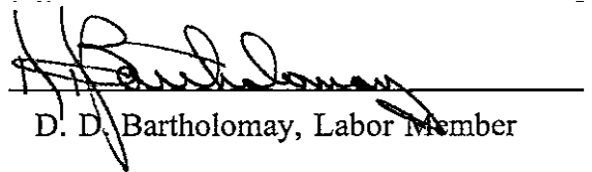
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



D. D. Bartholomay, Labor Member

Executed on 12/2, 1997

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