

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 190

Award No. 190

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES  
-and-

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised Vehicle Operator Bus Position No. 05-024-3618-7951-8 on Bulletin No. 437 which was not cancelled and failed to award the position to Mr. E.L. Kostura, who filed a bid for the position, as required by Rule 3 (d).
- (2) As a consequence of the aforesaid violation, the Carrier shall:
  - (1) Issue a correction to award the Claimant the position effective August 7, 1995, thereby awarding him new seniority.
  - (2) Make the Claimant whole for all wages lost, including overtime, commencing August 7, 1995 and continuing until such time as he is placed on the position.
  - (3) Include all lost benefits and credits normally due.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The material facts that led to this claim are not in dispute. On July 24, 1995, the Carrier posted Bulletin No. 437 advertising Vehicle Operator Bus Position No. 05-024-3618-7951-8 on the Harrisburg Division. The Claimant applied for the position even though he did not hold seniority as a Vehicle Operator. Moreover, he did not hold any seniority on the Harrisburg Division. Rather, he held seniority as a Trackman Eastern Regional Rail Gang RTG-101.

Conrail determined that there was no qualified applicant for the position so it readvertised it on August 4, 1995. The position was awarded to employee C. L. Geer effective August 21, 1995.

On August 21, 1995, the Organization filed a time claim and grievance on behalf of the Claimant contending that Conrail violated Rule 3 and Rule 4 of the Agreement when it did not award the Vehicle Operator Bus position to the Claimant. The Organization contends that the Claimant was fully qualified for the position and should have been awarded it based on his seniority.

The Carrier denied the time claim and grievance inasmuch as the Claimant had no seniority rights on the Harrisburg Division. Moreover, the Claimant did not hold any seniority as a Vehicle Operator. Therefore, according to the Carrier, the Claimant was obligated to demonstrate that he was qualified for the Vehicle Operator Bus position which he never did.

This Board considers the dispute at hand similar to the case in Third Division Award No. 31075 between these same parties. In Award No. 31075, the employee bid on a vehicle operator position on a seniority district on which he did not hold any seniority. The Board held that the employee had no right to be awarded the vehicle operator position since he did not hold any seniority on the seniority district where the vacancy occurred. In the Board's parlance:


*"However, the key to this case is that the Carrier [Conrail] need not accept a bidder who does not hold the proper seniority. . . ."*


This Board finds Third Division Award No. 31075 analogous to the case before us. Inasmuch as the Claimant did not hold seniority on the Harrisburg Division where Vehicle Operator Bus Position No. 05-024-3618-7951-8 was assigned the Claimant had no contractual entitlement to this position. The claim must be denied as a result without addressing other issues raised by Conrail when it denied the claim.

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AWARD: Claim denied.

  
Robert M. O'Brien, Neutral Member

  
Roy C. Robinson, Employee Member

  
Dennis L. Kerby, Carrier Member

Dated: 4/30/02