

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 194

Award No. 194

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 failed to award any of the B&B Mechanic positions, which were advertised and cited within Bulletin Nos. 391 ad 393 and which Messrs. J. Decock and R. Mosser properly submitted bids for, as required by Rule 3.
- (2) As a consequence of the violation referred to above, Messrs. J. Decock and R. Mosser shall each be awarded one of the B&B Mechanic positions advertised in Bulletin Nos. 391 and 393, with seniority and all other rights, and they shall be paid the difference between what they earned and the B&B Mechanic's rate of pay beginning June 3, 1996, and continuing.

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.

On May 21, 1996, the Carrier posted Pittsburgh Seniority District Bulletin No. 391. The bulletin advertised a number of positions including six (6) B&B Mechanic positions on Gang 04M1 at Pitcairn, Pennsylvania.

Claimant J. M. Decock applied for a B&B Mechanic position on Gang 04M1. He did not hold any B&B Mechanic seniority when he applied for the position. He was working as a Track Forman on the Pittsburgh Seniority district at the time of his bid. Because he lacked B&B Mechanic seniority Track Forman Decock was not awarded a B&B Mechanic position.

Only two (2) of the B&B Mechanic positions advertised in Bulletin No. 391 were awarded. Conrail concluded that there was "no qualified bidders" for one of the positions and "no bidders" for the other positions.

On June 4, 1996, the Carrier posted Pittsburgh Seniority District Bulletin No. 393. Again, the advertisement included B&B Mechanic positions at Pitcairn, Pennsylvania. Claimant R. L. Mosser applied for one of these positions. At the time of his bid, R. L. Mosser was a fuel truck operator on rail gang 320. He did not hold any B&B Mechanic seniority. Claimant Mosser was not awarded a B&B Mechanic position at Pitcairn, Pennsylvania.

The Organization filed a claim and/or grievance on behalf of employees Decock and Mosser contending that they should have been given the opportunity to demonstrate their qualifications on the B&B Mechanic positions on which they submitted bids. The Organization requested that the Claimants be made whole for the losses they incurred by the Carrier's violation of Rule 3, Section 2, of the BMW-CONRAIL Agreement.

The Carrier denied the claims/grievances contending that since the Claimants did not have any B&B Seniority they were not entitled to a B&B Mechanic's position. The Carrier maintains that it is under no obligation to grant new seniority where it does not currently exist.

It is undisputed that when the Claimants submitted their bids they had never worked as B&B Mechanics. They did not hold any seniority on a B&B roster. Accordingly, they had no contractual right to be awarded a B&B Mechanic position in June 1996.

Although the Claimants did not have the right to be awarded one of the B&B Mechanic positions advertised in Pittsburgh Seniority District Bulletin No. 391 and Bulletin No. 393, they did have the contractual right to demonstrate that they were qualified to perform the duties of the B&B Mechanic position. Rule 3, Section 2, of the BMW-CONRAIL Agreement expressly provides that employees will be permitted to give a reasonable and practical demonstration of their qualifications to perform the duties of an advertised position if they make a written request to do so.


It is unclear from the record whether the Claimants submitted a written request to demonstrate their qualifications to perform the duties of the B&B Mechanic position. The Organization insists they did submit such written requests whereas Conrail claims they did not.

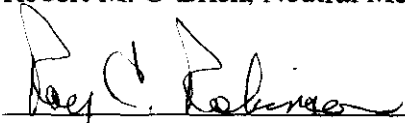
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Under the circumstances of this case, the Claimants should be afforded the opportunity to demonstrate their qualifications to perform the duties of the B&B Mechanic position if they are still interested in such a position. If they are successful, they shall establish B&B seniority as of the date they demonstrated their qualifications. No further remedy is ordered, however.

AWARD: Claim sustained to the extent indicated in the Findings.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.

  
Robert M. O'Brien, Neutral Member

  
Roy C. Robinson, Employee Member

  
Dennis L. Kerby, Carrier Member

Dated: 4/30/02