

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 195

Award No. 195

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 a Structural Welder Foreman position on April 15, 1996, assigned said position to Mr. M. A. Carpenter and thereafter assigned Mr. Carpenter to perform B&B Mechanic Foreman's duties instead of advertising and assigning a B&B Foreman position.
- (2) As a consequence of this violation the Carrier shall readvertise the position as a B&B Foreman position and Mr. B. F. Fay shall be compensated all wages, credits and benefits received by Mr. Carpenter beginning April 29, 1996, and continuing until the violation ceases.

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 April 15, 1996, the Carrier posted Bulletin Number 283 on the Toledo District. There were two positions advertised on Bulletin Number 283 - a Structural Welder Foreman position and a B&B Mechanic position. On April 29, 1996, M. A. Carpenter was awarded the Structural Welder Foreman position and L. L. Fisher was awarded the B&B Mechanic position. They worked as a two-man gang.

On June 19, 1996, the Organization filed a claim on behalf of B&B Foreman B. F. Fay. It is the Organization's position that the Carrier violated the BMW-CONRAIL Agreement when it did not advertise the Structural Welder Foreman position as a B&B Foreman position. The Organization contends that Structural Welder Foreman Carpenter is not performing any welding duties nor is he supervising any welding forces. According to the Organization, the only reason the Carrier advertised the job as a Structural Welder Foreman position was to prevent the Claimant from bidding on it.

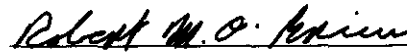
The instant claim lacks merit, in this Board's opinion. Absent a rule to the contrary, it is the Carrier's prerogative to decide what positions to advertise and to determine the duties to be assigned to employees.


The parties' Agreement does not restrict a Structural Welder Foreman to supervising welding forces. Rather, Rule 1 states that this position will "*Direct and work with employees assigned under his jurisdiction.*" It was the Carrier's managerial prerogative to require the Structural Welder Foreman to direct and work with B&B Mechanics.

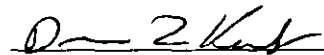
The Organization's contention that the only reason the Carrier advertised the position as a Structural Welder Foreman position was to prevent the Claimant from bidding on it is unfounded, in our opinion. This is mere conjecture on the part of the Organization. There is simply no evidence to support the contention.

For all the foregoing reasons, this Board finds that Conrail had the right to post Bulletin No. 283 advertising the position of Structural Welder Foreman and B&B Mechanic. There is no evidence that this was not done to discriminate against the Claimant. The claim must be denied as a result.

AWARD: Claim denied.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02