

Award No. 3627

Docket No. 3219

2-MP-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Missouri Pacific Railroad Company violated Rule 137(b) when job at El Dorado, Kansas was not bulletined in line with the rules agreement thus depriving Carman C. M. Stafford of his seniority rights.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman C. M. Stafford in the amount of eight (8) hours per day at the straight time rate, and for any overtime covered by the period of August 5th through September 27th, 1957.

EMPLOYEES' STATEMENT OF FACTS: On the Missouri Pacific Railroad, hereinafter referred to as the carrier, El Dorado, Kansas is an outlying point to Hoisington, Kansas and comes under the jurisdiction of the same master mechanic.

On July 18, 1957, Shop Bulletin No. 42 was posted advertising job for car inspector at El Dorado, Kansas, and the employes' herewith submit this bulletin as Exhibit A. Only July 24, 1957, Bulletin No. 42A was posted assigning Carman L. W. Gosvener to the job. However, on July 24, 1957, Carman George Tauscher, senior man to Mr. Gosvener, placed bid on this job, explaining that his bid was late due to his being on vacation, and the employes also submit Exhibit C which is copy of Mr. Tauscher's bid. Mr. Tauscher was assigned to this position at El Dorado, Kansas, and protected this assignment from July 30 through August 3, 1957, at which time he returned to Hoisington, Kansas. The job at El Dorado was vacant and on August 5, 1957, without bulletin being posted, Mr. Gosvener was assigned to the job at El Dorado, Kansas, working there until the job was abolished on September 27, 1957. However, Mr. C. M. Stafford, hereinafter referred to as the claimant, was the senior man to Mr. Gosvener and had bid been

The facts in this case show that Stafford did not suffer a loss of earnings as a result of failure to bulletin the position, and on the basis of the principles enunciated in the above awards is not entitled to recover the penalty requested here, even if it could be held that a penalty could be collected on behalf of a proper claimant.

In summary, the carrier states that to hold that the carrier was technically required to bulletin the position a second time would be to require the carrier to go through an unnecessary procedure since Carman Gosvener would have been the successful bidder on the position in any event, but even if the Board should find that the carrier was in technical violation of the agreement then the present claim cannot be sustained because it was not timely presented as required by Article V of the agreement of August 21, 1954. This Board may terminate its considerations of the claim at this point since the provisions of the time limit rule must be met if a claim is to be given any further consideration. However, in order to make the record complete, we have also shown that the penalty requested is not provided for by the agreement and that the particular claimant is not a proper claimant in any event since he worked regularly and suffered no loss of earnings. It follows that the claim must be denied.

FINDINGS: The Second Division of the Adjustment Board, based upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The claim is that the carrier should have bulletined the position at El Dorado, Kansas when it was vacated on August 5, 1957, as provided in Rule 137(b). It was initially presented to the carrier on November 13, 1957. The carrier maintains that the claim was not filed in time. Article V, Section 1 (a) of the Agreement of August 21, 1954 provides that claims must be presented by or on behalf of the employes involved within 60 days from the date of the occurrence on which the claim is based. The employes refer to Section 3 of Article V of the August 21, 1954 Agreement in which it is provided that a claim based on an alleged continuing violation of any agreement may be filed at any time so long as such alleged violation continues. The position at El Dorado was abolished September 27, 1957.

We think that this claim does not properly fall within the spirit or intent of the provision concerning alleged continuing violations of an agreement. The claim as initially filed was based on the principle that the position was not bulletined for August 5, 1957 and it did not allege a continuing violation of the agreement as required in Article V, Section 3 of the August 21, 1954 Agreement.

On the facts and circumstances shown of record in this case we think it unrealistic to hold that the failure to bulletin the August 5 vacancy was a continuing violation. The record shows that the claimant on whose behalf this claim was filed on November 13, 1957 had knowledge of the failure to bulletin the position on or about August 5, 1957 and apparently did nothing

about it until more than 60 days had expired. We find that in this case the claim was not timely filed and should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3627

The instant position should have been bulletined on August 5, 1957, the date on which it was filled by an employe possessing no seniority rights to the position. The fact that it was not bulletined made it a continuing violation until the position was abolished on September 27, 1957; therefore the instant claim properly falls within the provisions of Section 3 of Article V of the August 21, 1954 agreement and, since the claim was timely filed, claimant should have been compensated in accordance with said section.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink