

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 15(a) and (b) and the NOTE to Rule 15(a) of the Communications Agreement effective August 1, 1977 when they failed to bulletin a newly created position and allow the bidding process thereby denying the seniority rights of every communications maintainer on the seniority roster eligible to bid; and when Communications Maintainer M. D. Hanna was given the opportunity to exercise his seniority by "rolling and bumping".
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to:
 - (a) Properly advertise the new position, receive bids, and the assignment made to the senior employee of those making application in accordance to the Agreement,
 - and
 - (b) Compensate eight (8) hours at time and one-half commencing December 16, 1981 and continuous until Item (a) above of this claim is initiated to be divided equally among each and every communications maintainer who held and is holding bidding rights under the Agreement.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

This dispute was triggered when the Carrier, on December 8, 1981, notified Communication Maintainer M. D. Hanna by letter that:

"Effective 1:01 AM Wednesday, December 6, 1981 your assigned rest day will be Sunday, standby day Saturday. Your hours of assignment will be 8:00 AM to 5:00 PM with one hour lunch period per rule (C). Your headquarters, territory, and duties remain unchanged.

"You will be permitted to exercise your seniority or to retain this assignment. Please advise your preference."

Mr. Hanna responded that he wished "to retain this position". Prior to this change, Mr. Hanna worked 7:00 A.M. to 4:00 P.M., with a rest day on Tuesday.

The issue here, as asserted by the Organization, is that the position occupied by Mr. Hanna is a bulletined position and, thus, the change of the bulletined hours and rest day required the posting of a new bulletin and receiving of bids in accordance with the parties' Agreement.

The Carrier essentially contends that in order to better meet its operational requirements, it was necessary to change the rest day and starting time of Mr. Hanna's regular position. It maintains that the change of the starting time is in accord with Rule 5 of the Agreement. Moreover, it submits that the duties, headquarters, and territory of the assignment remain the same. It also avers that the change did not affect any other Communication Maintainers and, with respect to the changing of rest days, the Agreement is silent. In summary, it argues that its actions herein did not create a new position and the occupant is entitled to stay on the job on which he had bid.

At the outset, the Board notes that, except for two awards, the Carrier failed to submit supporting documentation for its assertions and a number of the contentions submitted to the Board were not made on the property and, therefore, not properly before us. On the particular facts and circumstances of the evidence properly before us, we do not set aside that reasonable arguments may lend support to the construction of the contract as asserted by the Carrier. However, when the provisions of the parties' Agreement most applicable to the facts and circumstances of this dispute are construed as a whole, with particular weight to the Seniority provision, Rule 15, and the Exhibit "R", with respect to bulletins issued in the past, the Organization's contentions are given substance and the claim is sustained on the merits.


However, with respect to the monetary relief requested, we have reviewed numerous awards and we find with those holding that, absent a clearly identified Claimant(s), compensation is not in order here and we so hold.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1985.