

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: ((Sheet Metal Workers International Association
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1) That the Missouri Pacific Railroad Company violated the Memorandum of Agreement of June 11, 1984, when Sheet Metal Worker K. R. Miller's bid to Position SM17M advertised at Fort Worth, Texas to be assigned at North Little Rock, Arkansas, was refused;

2) That accordingly, the Missouri Pacific Railroad Company be ordered to provide Sheet Metal Worker Miller with all the protective benefits provided under the Memorandum of Agreement of June 11, 1984, and that he also be compensated for all wage loss and fringe benefits that would have accrued to him had his bid been accepted.

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.

The Carrier made the decision to transfer work from its Fort Worth, Texas facility to its North Little Rock, Arkansas facility. In order to accomplish this it was necessary to consummate an Implementing Agreement with the Sheet Metal Workers. The negotiated Agreement allowed two Sheet Metal Worker positions to be transferred to North Little Rock.

Claimant was an unsuccessful bidder on one of the two positions. He had been working a position for an absent holder of the position when the Implementing Agreement was effectuated. The Carrier had denied his bid on the grounds that he was a furloughed employee at the time of the posting of the positions and furloughed employees were not allowed to bid. After the denial Claimant filed his Claim which has been progressed to this Board.

The Implementing Agreement was made pursuant to a September 25, 1964 Agreement which encompassed protective arrangements for displaced and dismissed employees. A pertinent part of the Agreement reads:

"1. Article I - Employee Protection of the September 25, 1964 agreement will be made part of the Agreement and all sections thereof will be complied with unless a separate Agreement is reached and then the section of Article I of the September 25, 1964 Agreement to be modified will be referred to."

By tying the provisions of this Agreement to the 1964 Agreement, the parties by implication invoked the provisions of Article VI of that Agreement which reads:

"The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection, and Article II, Subcontracting."

The clear upshot of these provisions, read together, is that disputes concerning protective payments are exclusively vested in a disputes tribunal formed under the provisions of the 1964 Agreement.

We must, therefore, dismiss that part of the Claim that asks for protective benefits for the Claimant because we have no jurisdictional authority to hear such Claims.

Although not clearly stated we interpret the second part of the Claim to relate to wage payments that would have been made if Claimant had been awarded the position. Claimant's right to the position for which he bid and any subsequent payments for not having been awarded that position are determined by the bidding Rule, Rule 11, which reads in pertinent part:

"Employees bidding in positions under this rule will not be permitted to bid on the position vacated by them...."

The literal wording of this Rule requires that a successful bidder leave a position which necessitates the interpretation that he must have an assigned position. Claimant did not have an assigned position and was simply covering the position of a regularly assigned employee who was sick. He cannot qualify for a bid under the Rule.

Claimant had no right to the position and, as stated earlier, if he had a right to protective payments, he must pursue that right before another forum.

Form 1
Page 3

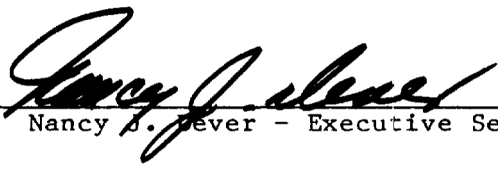
Award No. 11163
Docket No. 10958
2-MP-SMW-'87

A W A R D

Claim denied and dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1987.