

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12389
Docket No. 12364
92-2-91-2-154

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
(Delaware and Hudson Corporation

STATEMENT OF CLAIM:

The following dispute, as filed by Electrician James P. Morris, employed by the Delaware and Hudson Railroad Company, under dates August 6, 1990 and also August 14, 1990:

I James P. Morris, am submitting a claim for all lost wages and overtime, and violation of seniority, for job bulletin SE-1-90 Electrician out of (Saratoga Shop) at a rate of \$11.96 per hour per 8 hour shift from March 5, 1990 to current date in question as Agreement between Delaware & Hudson R.r. & IBEW Local.

FINDINGS:

The Second Division of the Adjustment Board, 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 employes 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 essence of this dispute is the Claimant's assertion that he was not advised of, and the Carrier did not award him the position of Electrician at Saratoga Shop, New York, that was advertised on February 28, 1990. The Claimant contends that he was the senior furloughed Electrician on the seniority district subject to recall.

The Board has carefully examined the procedural issues advanced by the parties. However, we conclude that this appeal would best be resolved on its individual merits in view of the particular circumstances of this case.

With respect to the merits, the Board is not unmindful of the skilled and vigorous advocacy pursued by the Organization on behalf of the Claimant. However, we conclude that its position cannot overcome the Claimant's own actions and responsibility in this manner.

Although there are a number of issues to this Claim which we will not address because they are not determinative of the dispute, the underlying question is whether the Claimant was aware of Bulletin No. SE-1-90 that advertised the Electrician position at Saratoga Shop, New York. We conclude that he was aware of the vacancy. In reaching this finding, we particularly note that 3 employees of the Mechanical Department submitted statements that they saw the Claimant on the premises during the first week of March 1990, and that they saw the Claimant when he participated in discussions about job placements and job bids posted on the Locomotive Shop Bulletin Board. The General Manager's letter of March 14, 1991, also attested to these same events.

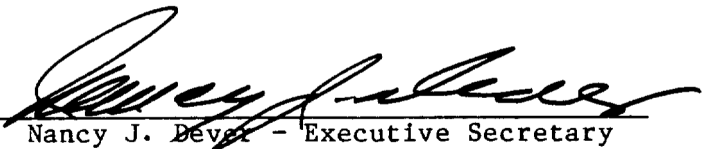
Therefore, for all of the foregoing reasons, we conclude that the Claimant was aware of the bulletined Electrician position. He cannot now hold others accountable for his failure to apply for the position in the normal and timely manner.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1992.