

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated the current Agreement on March 16, 1979 and thereafter when it imposed a residence requirement on Communications Department Bulletins.
2. That the Soo Line Railroad Company be ordered to correct all Communications Department Bulletins since March 16, 1979 by deleting the residence requirement.
3. That all corrected bulletins referred to hereinabove be re-bulletined and re-opened for bids thereon.

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 waived right of appearance at hearing thereon.

On March 16, 1979, Carrier issued Bulletin No. 269 in which it advertised for the position of Communications Maintainer headquartered at Carrier's Minneapolis, Minnesota facility. In addition, Carrier listed the following requirement:

"Successful bidder will reside at Headquarters."

Prior to that date, Carrier's bulletins had not contained a residency requirement.

As a result of Carrier's action, the Organization filed this claim. The Organization alleges that Carrier's residency requirement violates Rule 8(a) of the Agreement. That rule reads:

"New Positions or vacancies of 30 days or more will be bulletined at the headquarters of interested employees for a period of ten days, during which time employees may file their applications with the official whose name appears on the Bulletin. The Bulletin will show location, descriptive title, hours of service and rates of pay of the position bulletined. Assignment will not be made prior to ten or less than twenty days from date the bulletin is posted. Copy of bulletins issued and copy of assignment notice will be furnished interested committeeman and men bidding."

The Organization contends that Rule 8(a) is clear and unambiguous. It states the bulletin will contain the "location, descriptive title, hours of service and rates of pay" for the designated positions. In the Organization's view, Carrier is precluded from listing any additional job requirement, such as residency, by the specific language of the Rule.

In addition, the Organization argues that elimination of the residency requirement from the bulletin does not prevent the Carrier from quickly securing the services of an employee in the event of an emergency. According to the Organization, Carrier has always been able to call upon available employees in unusual circumstances before it imposed a residency requirement. Thus, the Organization concludes that it is both unfair and violative of the Agreement for Carrier to now mandate that employees shall live in the area where they are headquartered.

Carrier, on the other hand, denies that Rule 8(a) prevents it from including a residency requirement on its bulletins. It insists that Rule 8(a) only mandates the inclusion of certain information on a bulletin. It does not prohibit the addition of other information which would be helpful to employees seeking to bid on the position advertised.

In addition, Carrier argues that over the years more and more employees began to live far away from their assigned headquarters. In Carrier's view, it is unreasonable to permit a Communications Maintainer so far away from his or her trouble area as to make a quick repair of necessary equipment a virtual impossibility. Thus, Carrier concludes that its regulation was in accordance with the Agreement and was a reasonable one.

This dispute centers on two issues. First, does Rule 8(a) prohibit the inclusion of a residency requirement. Second, if it does not, is the promulgated regulation reasonable.

As to the first issue, we are convinced that Rule 8(a) does not prevent Carrier from listing a residency requirement on bulletins advertising positions represented by the Organization. Rule 8(a) is essentially a "notice" provision. That is, under Rule 8(a) employees are notified of the procedures by which they may bid for available positions and of the basic requirements of the positions themselves - i.e., "location, descriptive title, hours of service and rates of pay." Clearly, Carrier may furnish other information reasonably related to the position being advertised. For example, it is undisputed that Carrier's bulletins list "Qualifications" in addition to location, descriptive title, hours of service and rates of pay". Surely, it is clear that Rule 8(a) provides the minimum information Carrier must furnish on its bulletins advertising available positions.

The second issue to be decided is whether a residency requirement, under the facts of this case, is a reasonable one. Carrier argued that it was necessary for Communications Maintainers to live in the headquartered area so as to be readily available to any breakdowns which might occur in their assigned territories.

However, the residency requirement here goes far beyond the legitimate needs of Carrier. In Bulletin No. 269, bidders for the Communications Maintainer position are required to live within the city limits of Minneapolis, Minnesota. Thus, for example, an individual who resides just outside that city is precluded from bidding on the position even though he or she may be able to reach any part of his or her assigned territory within a reasonably short period of time. To that extent, then, Carrier's residency requirement is unreasonable.

There remains only the issue of an appropriate remedy. The Organization's claim asks that all Communications Department Bulletins issued on or after March 16, 1979 be reissued, deleting the residency requirement. However, the Organization has not shown that any bidder or potential bidder on any of the positions advertised on or after March 16, 1979 was in any way harmed or disadvantaged as a result of the residency requirement. It is true that there should be a remedy for any Agreement violations in the railroad industry. However, the only appropriate remedy, under the facts of this case, is to require Carrier to delete prospectively residency requirements which are overly broad, e.g., that employees live in the city in which they are headquartered.

Finally, we have carefully reviewed the Awards cited by Carrier in support of its position. To the extent that they permit Carrier to impose residency requirements reasonably related to the positions bulletined, we are in accord. However, insofar as they permit Carrier to impose a residency requirement which does not reasonably relate to the positions being advertised, we do not agree with their holdings.

Form 1  
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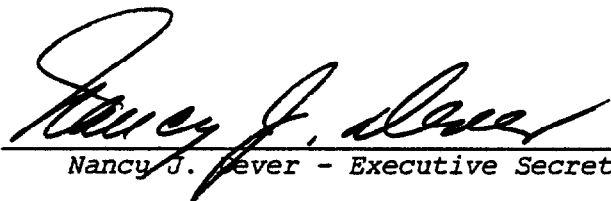
Award No. 9720  
Docket No. 9203  
2-SOO-EW-'83

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1983.