

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11396
Docket No. 11026-T
88-2-85-2-135

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. Claim of Consolidated Rail Corporation Southern Region, Southwest Division Radio Maintainer Gary R. Jackson that:

It has been brought to my attention that Mr. M. Logan has been appointed Assistant C&S Supervisor; replacing former Assistant C&S Supervisor M. Humes.

This is in violation of the understanding we agreed to in your office November 4, 1982. As you will remember you assured I.B.E.W. International Representative Norman Schwitalla, I.B.E.W. System Council #7 Vice General Chairman Dalton Brennan, Assistant General Chairman Fred Jones, I.B.E.W. Local 784 President Gary Jackson and Vice President Mike Blanton that you would see to it that though the I.B.E.W. had been excluded in the past from bidding on supervisory position this would not happen again; and you would see to it that the I.B.E.W. members of the C & S Department would receive copies of the bulletins.

It was pointed out to you that excluding former N.Y.C.R.R. Assistant Supervisor E. E. Cogdill none of the supervisors or assistant supervisors in the Southwest Division of Conrail are former I.B.E.W. In fact and as a matter of record, all supervisors and assistant supervisors in the C&S Department are former B.R.S. And during the conversation you admitted that you were formerly with the B.R.S.

This manifest discrimination is intolerable. Therefore, be advised that we are time slipping this breach of promise under Rule 8-H-1(c) of the I.B.E.W. - Conrail Agreement dated May 1, 1979. We demand eight hours pay at the overtime rate for each day beginning November 18, 1983, and to continue until an I.B.E.W. member is placed in supervision in the C&S Department, Southwest Division of Conrail. Claimant of this claim is Local Chairman Gary R. Jackson.

2. That the Carrier failed to reply within the time limits set forth in Rule 4-P-1(a) of the Agreement and accordingly the instant claim should be allowed as presented.

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.

As third party in interest, the American Railway and Airway Supervisors Association was advised of the pendency of this case, but chose not to file a Submission with the Division.

In this dispute, the Organization contends that Carrier violated the controlling Agreement, particularly, Rule 8-H-1(c), when Carrier failed to comply with an on-situs understanding reached on November 4, 1982, that I.B.E.W. members would receive bulletins of available supervisory positions in the C & S Department. In this instance, it charges that Carrier appointed a former BRS employee to an Assistant C & S supervisor's position. It also asserts that carrier violated the time-limit requirements of Rule 4-P-1(a) when Carrier failed to reply in timely fashion to its initial Claim letter, dated November 21, 1983. Its claim is referenced as follows:

"It has been brought to my attention that Mr. M. Logan has been appointed Assistant C & S Supervisor; replacing former Assistant C & S Supervisor M. Humes.

This is in violation of the understanding we agreed to in your office November 4, 1982. As you will remember you assured I.B.E.W. International Representative Norman Schwitalla, I.B.E.W. System Council #7 Vice General Chairman Dalton Brennan, Assistant General Chairman Fred Jones, I.B.E.W. Local 784 President Gary Jackson and Vice President Mike Blanton that you would see to it that though the I.B.E.W. had been excluded in the past from bidding on supervisory position this would not happen again; and you would see to it that the I.B.E.W. members of the C & S Department would receive copies of the bulletins.

It was pointed out to you that excluding former N.Y.C.R.R. Assistant Supervisor E. E. Cogdill none of the supervisors or assistant supervisors in the Southwest Division of Conrail are former I.B.E.W. In fact and as a matter of record, all supervisors and assistant supervisors in the C & S Department are former B.R.S. And during the conversation you admitted that you were formerly with the B.R.S.

This manifest discrimination is intolerable. Therefore, be advised that we are time slipping this breach of promise under Rule 8-H-1(c) of the I.B.E.W. - Conrail Agreement dated May 1, 1979. We demand eight hours pay at the overtime rate for each day beginning November 18, 1983, and to continue until an I.B.E.W. member is placed in supervision in the C & S Department, Southwest Division of Conrail. Claimant of this claim is Local Chairman Gary R. Jackson."

Carrier argues that it fully complied with the time-limit requirements of Rule 4-P-1(a), since the Claim was postmarked on November 22, 1983, and answered by letter dated January 20, 1984. This was 59 days after the post-marked date. It further contends that the Claim is without effect, since Agreement Rule 8-H-1(c) applies only to union officers representing members of the I.B.E.W. It notes that the Assistant Supervisor's position falls within the ambit of the Conrail-ARAS Agreement and thus not applicable to the I.B.E.W.

In considering this case, we find that Carrier's answer to the Organization's initial Claim was timely and consistent with the requirements of Rule 4-P-1(a). We find no procedural violation.

As to the substantive merits of the Claim advanced, namely was Rule 8-H-1(a) violated when the I.B.E.W. was not informed of the C & S Supervisor's position, we must concur with Carrier's position that said Rule does not apply to these circumstances. Rather, it applies to union officials representing I.B.E.W. members and we find no indication that these representation rights were breached. We must point out, however, that an understanding, though not formalized in writing, was ostensibly reached by the parties on supervisory vacancies in the C & S Department, and Carrier, as a moral obligation, should insure that the spirit of this understanding is observed.

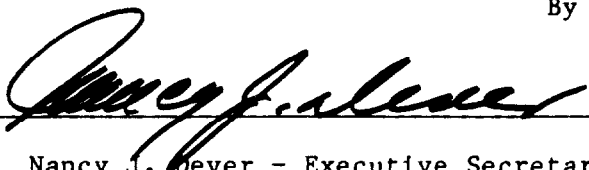
We will not comment on the Conrail-ARAS Agreement, since it is not before us.

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 6th day of January 1988.