

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

1. That the Denver and Rio Grande Western Railroad Company violated the provision of the controlling Agreement when it added a stipulation that in order to bid Bulletin No. 624, advertising a vacancy for a Carman Cutter-Welder working Burnham Steel Shop and also truck driver of Unit 341 as needed, the successful bidder must be off the derrick crew.

2. That the carrier rebulletin the position of driver of Unit 341 without the stipulation that the successful applicant must be off the derrick crew.

3. That the carrier be ordered to compensate Carman DuBose all overtime earned by the driver of truck No. 341 until this claim is resolved.

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.

This dispute concerns the posting of the vacancy resulting from the retirement of the incumbent driver of Unit 341 (Mobile Repair Truck). The Carrier posted Bulletin No. 621 "for a Carman Cutter-Welder working Burnham Steel Shop and also driver of Unit 341 as needed and other duties." It then cancelled that Bulletin and replaced it on June 12, 1987 with Bulletin No. 624. The new Bulletin differed from the initial posting in that it required that the "[s]uccessful applicant must be off derrick crew." Carman C.L. DuBose, the Claimant, and Carman J.H. Lockwood both submitted bids on Bulletin No. 621. Claimant was senior to Lockwood. However, only Lockwood submitted a

bid on Bulletin No. 624. Claimant did not bid on that Bulletin. Lockwood received the position from Bulletin No. 624.

The Organization acknowledges that Claimant did not bid on Bulletin No. 624. It contends that he was not allowed to bid on that position under the restriction imposed by the Carrier. The Organization further argues that Claimant fulfilled his obligation to comply first, then grieve, when he bid on Bulletin No. 621, since that was the same position as Bulletin No. 624 except for the disputed restriction. In addition, the Organization asserts that it can grieve the Carrier's posting even if Claimant did not bid on the position, since it is entitled to contest the disputed restriction.

As to the merits of this Claim, the Organization maintains that this restriction eliminates 80% of the otherwise eligible bidders for this position, in violation of Rule 15 of the applicable Agreement. It contends that the Carrier's actions reduce the seniority rights of those employees, and diminish their overtime opportunities. The Organization further maintains that the Carrier had not previously required a Carman to hold a wrecking crew job in order to hold the position of a Carman Cutter-Welder, and that any such changes must be negotiated with the Organization.

The Carrier contends that this Board must uphold its decision to dismiss this grievance because Claimant did not bid on Bulletin No. 624. As to the merits of this Claim, the Carrier maintains that its decision to change the requirements of the position was the result of sound business judgment e.g., that Unit 341 is a support vehicle for the wrecker and Mobile Crane, and that the driver of this vehicle has always been a derrick or rerailling man. It argues that this Board should not interfere with this decision unless the Organization provides clear and convincing evidence that the claimed business reasons are arbitrary or capricious.

This Board agrees with the Carrier that the grievance must be dismissed because Claimant did not bid on Bulletin No. 624. This conclusion is required by the language of Article 15 of the Agreement, which provides that "[i]n filling new positions or vacancies in the respective crafts, the oldest employe in point of seniority bidding on bulletin thereunder shall, if sufficient ability is shown by fair trial, be given preference in filling such positions or vacancies." (Emphasis added). Bidding on the Bulletin is therefore a contractually agreed-upon prerequisite in order for an employee to be considered for a position.

The Board also finds persuasive the reasoning in Third Division Award 16919, in which that Board dismissed a grievance under similar circumstances. The Third Division held that:

"The Claimant, upon whose behalf the matter is now before this Board, never submitted a bid for the position in question. It is true that he was recommended to the Carrier as being qualified for

the position, but the record is devoid of any evidence that he, himself, ever made proper application. Despite this, Carrier nevertheless ruled that he was not qualified for the job.

As we view this case, we need not consider whether Carrier's adjudication of Claimant's qualification was arbitrary and capricious, because before we would take this under consideration, Claimant must by positive action on his part, have submitted an application for the position. This is a requisite condition precedent to be established before we can consider his merit, ability, qualifications, etc. Absent this condition, there is simply no case for the Petitioner.

There are a number of other questions raised by the Organization throughout this record, all of which are beyond the substance of the claim itself. Hence we need not, nor can we address ourselves to those issues." (Emphasis added)

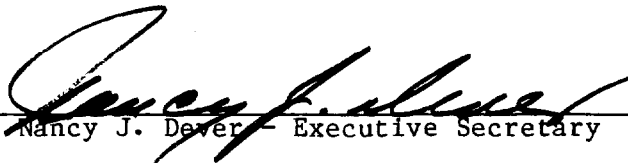
This Board is not convinced by the arguments advanced by the Organization on this point. Contrary to the Organization, this Board has concluded that Claimant did not comply first and then grieve. His failure to bid on Bulletin No. 624 meant that he did not, in fact, "comply" with the contractual requirement that he bid on the disputed Bulletin. In addition, the Organization's ability to enforce the contract does not fulfill the contractual requirement that the employe awarded the position must be one "bidding on bulletin thereunder..."

This Board also disagrees with the Organization's contention that Claimant was not allowed to bid on the position at issue. In point of fact, by choosing not to bid on Bulletin No. 624, Claimant actually took himself out of the selection process. He bid on Bulletin No. 621, but not on Bulletin No. 624. The Board agrees with the Third Division Award quoted above that such application "is a requisite condition precedent to be established before we can consider his merit, ability, qualifications etc." Absent this condition, "there is simply no case for the Petitioner," Id., especially where the contract itself clearly requires that the employee must bid on the Bulletin in order to be awarded the position.

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 11th day of September 1991.