

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12435
Docket No. 12424
92-2-91-2-222

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(CSX Transportation, Inc. (former Seaboard Coastline
(Railroad Company)

STATEMENT OF CLAIM:

1. That the CSX Transportation Company violated Rules 15, 30 and 32 of the controlling agreement when a bulletin was posted offering a voluntary separation for one carman at Hamlet, North Carolina and then assigned three separation allowances, one of which was to a junior employee, without posting a new or corrected bulletin.

2. That due to the granting of this separation allowance to a junior employee the same separation allowance must be offered to Carmen A. Morrison and H. E. Long, who were senior to H. Wheeler who was granted this separation allowance of \$50,000.00.

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.

The Carrier posted a notification advising that it was offering a voluntary separation to one Carman at Hamlet, North Carolina. The bulletin advised employees to contact "ARM" if there were any questions. On the day before the deadline date, grievant Long called ARM's office to ascertain if, by chance, there would be any more than one voluntary Carman separation at Hamlet, and he asserts that he was told there would only be one. However, the Carrier decided that it could permit three employees rather than one to accept separation at Hamlet, North Carolina, and the three oldest employees from the nine who had elected to submit a request for separation were selected.

The Claimants did not file a request, but they subsequently submitted claims (even though only one Claimant could conceivably be affected based upon the seniority rankings) asserting, among other things, that the Carrier should have re-bulletined the voluntary separation program when it decided to increase the number of available separations.

Carrier has raised certain procedural objections to the Board, concerning asserted alterations to the Claim. However, we fail to find that the allegation was raised while the matter was under review on the property, and accordingly, we are precluded from considering the procedural objection.

The Carrier defends on the merits by inviting our attention to the fact that neither Claimant submitted an application by the deadline date assumedly because they both "presumed" they knew who the senior bidder would be.

Carrier denies that the bulletin was misleading even though the notice was materially altered (from one to three separation allowances at Hamlet, North Carolina, because the bulletin was: "...clearly addressed to all Carmen and it was designed to solicit applications from all interested employees." Since the Claimants did not submit applications, they showed that they were not interested in taking advantage of the program and were properly bypassed.

This dispute presents no significant factual disagreement concerning the matters properly raised and considered on the property. Rather, it is incumbent upon us to decide if there was a material alteration to the original bulletin to the point that the employees were misled. Obviously they may have felt that there was no possible way their seniority status would have permitted them to gain the separation, whereas they might have applied if they knew that there would be three opportunities. But, of course that is speculation. If the employee who spoke with ARM's office (and allegedly received the incorrect assurance that only one job was to be eliminated at Hamlet) was the more senior of the two Claimants, the result herein might be different, since he did ask a question as directed in the bulletin. But, it is the other Claimant who is the more senior and he made no such call. There is an indication in the record of how the senior of the Claimants received certain information. But that information was not developed and considered on the property.

The senior Claimant may very well have made certain presumptions under the wording of the bulletin, and the facts were then changed. We certainly do not condone the Carrier's action of changing the numbers without some type of notification, but under this record, we can not find a detrimental "misleading."

A W A R D

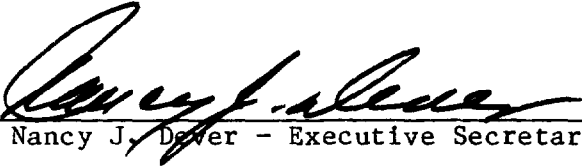
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1992.