

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That Signalmen's Agreement was violated when Mr. W. H. Morrison was assigned to position advertised in Bulletin No. 33 instead of Mr. W. R. Mohler.

That Mr. W. R. Mohler be paid eight (8) additional hours each day at time and one-half rate for each day that he has been held off the position advertised in Bulletin No. 33 and required to work second trick at Lee Street, Baltimore.

JOINT STATEMENT OF FACTS: Under date of June 11, 1951, Bulletin No. 33 was issued to all Signal Department employes on the Baltimore, East End seniority district advising that applications would be received up to 12 midnight, June 21, 1951 for position of Signalman in J. S. Foster's gang with headquarters at Baltimore, Md.

Claimant W. R. Mohler, second trick maintainer at Lee St., Baltimore, Md. made application for the position in J. S. Foster's gang.

Award Bulletin No. 36 dated June 26, 1951 awarded this vacancy to W. H. Morrison.

There was an agreement in effect bearing date of August 1, 1939, which is by reference made a part of the record in this case.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

POSITION OF EMPLOYES: It is the position of the employes that Mr. Mohler was the senior applicant upon the closing time for receiving bids and it is evident that Mr. Morrison's application was received too late to be considered in accordance with the rules.

Rule 48(c) states:

"All applications for bulletined positions shall be in writing, bearing the personal signature of the applicants. They shall be prepared in duplicate and one copy forwarded to the designated officer of the Company and the other copy to the Local Chairman.

See Awards 4304, 2622, 5307. Any change to be made in a contract to meet a condition as here presented is a matter for negotiation between the parties. We can neither legislate nor can we write into the Agreement that which is not there."

In view of all that is contained hereinabove the Carrier submits that this claim is without merit and respectfully requests this Division to deny it accordingly.

OPINION OF BOARD: The parties agree that the issue in this case resolves itself into a question as to whether Mr. W. H. Morrison's application for the job advertised in Bulletin No. 33 was timely received. Both agree that Morrison had greater seniority.

Under date of June 11, 1951, Bulletin No. 33 was issued to all Signal Department employes on the Baltimore, East End seniority district advising that applications would be received up to 12 midnight, June 21, 1951, for position of Signalman in J. S. Foster's gang, with headquarters at Baltimore, Maryland. Claimant W. R. Mohler, second track maintainer at Lee Street, Baltimore, made timely application for this position. On the morning of June 22, 1951, he called the office of Signal Supervisor A. A. Jacobs and talked with Mr. A. G. Orrison, since Mr. Jacobs was absent. The latter said that, so far as he knew, Mohler was the senior applicant for the job. Not being fully satisfied with this answer Claimant Mohler called Assistant Signal Supervisor, W. J. Ferguson on the morning of June 23, 1951. According to the record, Mr. Ferguson told Claimant that he was the senior applicant and that he (Ferguson) had made out a bulletin awarding the job to Claimant. This bulletin had been turned over to Mr. C. R. Riley, Division Engineer, for his approval.

Subsequently, however, an application from Mr. W. H. Morrison was received. This reached the office of Signal Supervisor A. A. Jacobs, via railroad mail, June 15, 1951. Mr. Morrison's application bore the date of June 20, 1951; but since it was not sent by U.S. Mail, it bears no postal date. Mr. Morrison having greater seniority than Claimant, and being qualified, was awarded the job (Award Bulletin No. 36, dated June 26, 1951).

Rule 48 (c) of the parties' Agreement provides that, "All applications for bulletined positions shall be in writing, bearing the personal signature of the applicants. . . . Applications will be filed before the closing time specified in the bulletin. Applications received after the closing time will not be accepted." (Emphasis supplied).

This language is clear, succinct and unambiguous. Regardless of delays in the mail, and regardless of dates on the applications, the important thing here is the time the application is received. The carrier specifies the time at which the deadline is set for the receipt of such applications. If midnight is not an appropriate time, some other more convenient time could be stated. But to specify a closing time of Thursday midnight and receive applications the following Monday morning hardly seems in keeping with the rule which the parties have adopted.

The applicant for a bulletined position is obligated to meet the stated deadline or forfeit his claim to that position. Regardless of his seniority, the rule set forth is firm but fair. If this Board fails to support a Claimant who has complied with the rule which the parties have adopted, and supports one who has not, it will be refusing to give effect to one sentence in Rule 48 (c). The parties have said that, "Applications received after the closing time will not be accepted." W. H. Morrison's application was received after closing time and it was accepted. In this the carrier has failed to observe the rule; and the Claimant is entitled to a reasonable adjustment.

The compensation requested by Claimant Mohler is in excess of the amount this Board should award in such a situation. The request for eight

hours pay at time and one-half rate for each day that he has been held off the position advertised in Bulletin No. 33, and required to work second trick at Lee Street, Baltimore, can not be sustained without upsetting a well-established policy of this Board. Punitive rates are not awarded for work not actually performed.

Claimant remained on the Lee Street job as a second trick maintainer. The extent of his financial loss was the difference between what he earned in that position and what he should have earned had he been given the position of signalman which was advertised in Bulletin No. 33. Therefore, he shall be paid the difference between his earnings as a second trick maintainer and what he might have earned as a signalman on the job in question. This award shall be retroactive to the date when W. H. Morrison was assigned to the signalman position.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the Employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the applicable provisions of the Agreement.

AWARD

Claim sustained to the extent set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.