

 Award No. 15024

Docket No. MS-15949

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

JOSEPH P. McCARRICK

**NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division),
AND NEW YORK DISTRICT**

STATEMENT OF CLAIM: PLEASE TAKE NOTICE that petitioner intends to file an ex-parte submission to the Third Division of the National Railroad Adjustment Board on or before 30 days from the date hereof and that the particular question upon which an award is desired is as follows:

Did Joseph P. McCarrick violate Section 58 of the Brotherhood of Railroad Signalmen Agreement with the New York Central System by failing to bid on a regular assignment advertised in Bid Bulletin #11, dated March 12, 1964 justifying his removal from the Seniority Roster with replacement at the bottom thereof or was such removal and replacement unjustified in view of his failure to receive the said Bid Bulletin, and

PLEASE TAKE FURTHER NOTICE that a brief description of the dispute is as follows:

That on or about April 28, 1964, a grievance was submitted against petitioner claiming a violation of the aforesaid Section of the Brotherhood of Railroad Signalmen Agreement by virtue of his failure to bid on a regular assignment; that thereafter the New York Central System wrote to petitioner informing him of its intention to comply with the request previously made that petitioner's name be removed from its position on the Seniority Roster and placed on the bottom thereof; that petitioner thereafter gave written notice of his rejection of said grievance stating that he did not receive the Bid Bulletin in question; this claim was denied by respondent on September 11, 1964; thereafter petitioner took the matter to the Grand Lodge Headquarters of the Brotherhood of Railroad Signalmen and on April 12, 1965 a letter from Mr. Jesse Clark, president of the said Brotherhood stated his view that the respondent was correct in removing petitioner's name from the Seniority Roster and that the said Brotherhood did not feel that there was any complaint against the respondent; That petitioner denies that he ever did receive the Bid Bulletin and that information which he received regarding a portion of its contents was from a personal acquaintance and related solely to a particular portion therein and not the entire Bulletin and that as a result petitioner's loss of seniority was completely unjustified since he was not given an opportunity to retain it by receiving the Bid Bulletin issued by respondent.

OPINION OF BOARD: This case stems from Petitioner's failure to bid on positions as required by Section 58 of the Agreement reading as follows:

"Sec. 58. Employees laid off on account of force reduction who desire to retain and accumulate seniority must file their address with employing officer and with Local Chairman within 10 days from date laid off. They shall immediately notify both of any change of address. Failure to bid on or report for reasonably continuous work upon being mailed notice as to position open, shall, unless prevented by sickness or by leave of absence, forfeit seniority."

Carrier raises two procedural objections—1) that Claim was not filed within 60 days after date of the occurrence, and 2) that it was submitted to the Board without having been appealed in the usual manner on the property.

With respect to objection No. 1, it is noted that the Signal Supervisor accepted and denied the Claim without raising any question as to timeliness. Therefore, we hold that any alleged defect was waived.

As to objection No. 2, in the absence of any evidence that the Claim was appealed as required by the Agreement, we have no choice other than to dismiss the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Claim is barred.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 8th day of December, 1966.