Award No. 16373
Docket No. MW-17104

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mr. D. L. Bullington instead of Mr. Donald Greenfeather to the position of frog repairer helper in Frog Gang No. 373 on April 18, 1966 and subsequently refused to permit Mr. Greenfeather to displace Mr. Bullington. (System File D-4357/B-680)

(2) Mr. Donald Greenfeather now be assigned to the position of frog repairer helper in Frog Gang No. 373.

EMPLOYES' STATEMENT OF FACTS: The Carrier advertised the position of frog repairer helper in Frog Gang No. 373 by Bulletin Notice No. SW-60 dated April 6, 1966. Said bulletin was posted exclusively at the headquarters of the gangs in the Welding Sub-Department. No bids were received for the position from any employe holding seniority in the Welding Sub-Department.

On April 18, 1966, the Carrier issued Supplement No. 1 to Bulletin Notice No. SW-60 which stipulated that Mr. D. L. Bullington was assigned to the frog repairer helper's position. Mr. Bullington first entered the Carrier's service in the B&B Department on January 10, 1966 and held no seniority rights in the WELDING Sub-Department.

The claimant has established and holds seniority as a trackman in the Track Department as of December 28, 1960. He has also established seniority rights as a special equipment operator. In April, 1966, the claimant was the regularly assigned operator of Machine T-139M in a system gang.

Because the position of frog repairer helper was not advertised by bulletin at the headquarters of the system gangs, the claimant was unaware that a frog repairer helper's position had been bulletined until after Mr. Bullington had been assigned thereto. When the claimant requested the opportunity to displace Mr. Bullington, the Carrier refused to permit him to do so.

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Under and in accordance with the provisions of Rules 6 and 7 of Article 3 of the controlling Agreement, the roadmaster on the 31st track division of this Carrier issued and posted vacancy Bulletin SW-60 dated April 6, 1966 (Carrier's Exhibit A) advertising a vacancy for one frog repairer helper on Frog Gang 373 on the 31st track division with headquarters at Tulsa, Oklahoma. The roadmaster received no bids from employes with applicable seniority in the sub-department of lead welders, frog repairers and helpers, rail welders and helpers, rail joint grinders and helpers, but Employe D. L. Bullington, who had entered the service of this Carrier January 10, 1966 as a B&B helper, made application for the vacancy while it was under bulletin (Carrier's Exhibit B). The applicant claimed he had been schooled in welding. Investigation developed the applicant had studied welding in a high school agricultural course and had continued his course of study to the extent of obtaining six credit hours in both gas and electric welding at a technical school.

In the absence of any other bid or application for the vacancy, and in the judgment of management, Applicant Bullington's ability and merit being sufficient, the vacancy was awarded to him. Announcement of assignment was duly issued and posted April 18, 1966 (Carrier's Exhibit C).

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier advertised the position of frog repairman helper on April 6, 1966, by posting a bulletin at the headquarters of the gangs in the Welding Sub-Department. No bids were received for the position from any employe holding seniority in that Sub-Department. D. L. Bullington, a B and B helper had applied for the position and was assigned thereto. Claimant Greenfeather, an employe with seniority in the Track Sub-Department, filed the instant claim asserting his right to the disputed position.

The Organization asserts that when no application was forthcoming from the Welding Sub-Department, that employes in other Sub-Departments should have been given equal opportunity to apply for the position particularly since the bulletin was addressed: ALL MAINTENANCE OF WAY EMPLOYES. It contends that the Claimant had no opportunity to see the bulletin concerned, and thus was denied an equal opportunity to utilize his seniority rights. Claimant had sufficient qualification to do the work in dispute and by virtue of his greater seniority should now be permitted to fill the position involved.

The Carrier asserts that it acted properly in posting the position in the Sub-Department concerned; that absent an application therefore, it was free to make an assignment to the position without further bulletining; and that Bullington was properly assigned to the position in dispute.

Rule 7 of Article 3 requires the Carrier to post a bulletin notice for promotions to fill vacancies.

". . . for a period of ten days at the headquarters of the gangs in the Sub-Department of employes entitled to consideration in filling the positions, during which time employes may file their applications with the officer whose name appears on the bulletin . . ."

In the instant case it is clear that the Carrier complied with the requirements of this provision. There is nothing in the language thereof requiring it to post the position in any other sub-department nor which precludes employes of other sub-departments from filing applications for such position within the time limits if they learn of its availability.

The essential question before us is the nature of the Carrier's responsibility if only bids come from employes outside the sub-department. That eventuality is provided for in Rule 3 of Article 3 which states that when a position is not filled by a Welding Sub-Department employe,

". . . Employes in other sub-departments may be assigned to positions in the Welding Sub-Department . . ."

We find that the Carrier acted properly under this provision in assigning Bullington to the position. There was no language cited which either required wider posting of the position, or which restricted the Carrier's right to assign the position to the only bidder for the position. If the parties intended a wider posting of unbid sub-department positions, or a provision leaving open such positions to subsequent bidding by senior qualified employes, it was incumbent upon them to insert such language in their Agreement. We are in no such position to do so, and must be bound by the language set forth in the Agreement.

"The Board is a statutory body of limited jurisdiction. It may only interpret and apply collective bargaining agreements negotiated and executed by the disputants. It may not insert in such Agreements its sense of equity or economic and labor relations predelections. Where the parties to an Agreement, or one of the, find it wanting, recourse lies in the collective bargaining procedures prescribed in the Railway Labor Act." (Dorsey 13491)

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 Employes 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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1968.

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