

Award No. 16639
Docket No. CL-17394

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE UNITED STEELWORKERS OF AMERICA

THE UNION RAILROAD COMPANY

STATEMENT OF CLAIM: The claim in this case arose when the Management of the Union Railroad Company failed to award Mr. G. R. McCrea, the claimant, a Trainee position, covered by the agreement. Mr. McCrea was the senior applicant for this position. The claim as filed with the Carrier is listed as follows:

Violations of paragraph (f) - 2 of Memorandum of Understanding effective April 1, 1956, between the Union Railroad Company and the United Steelworkers of America, Local 3263. This claim is submitted as a continuing violation for as long as this practice is continued and I am assigned to the extra board; in accordance with Rule 30, Section 3, of the current agreement.

On the Yard Clerk advertisement dated August 3, 1966 a bulletin was posted for two Yard Clerks from the extra board to train in the Assistant Superintendent's Office at Mon Junction. I submitted a written application for this position and it was rejected by the Crew Dispatcher. Mr. Moorhead, the Crew Dispatcher, advised me on August 10, 1966 that he was canceling the advertisement because I had bid for it.

Since I was the senior applicant for this position, I ask that the company comply with the agreement and assign me to the position. Upon failure of the company to comply with the agreement please allow the difference between Yard Clerk rate, and the Assistant Superintendent's Office rate for each day a junior employe from the extra board is used on this position; and further allow eight hours for each day I do not work and a junior employe from the extra board is used on this position.

/s/ G. R. McCrea

EMPLOYEES' STATEMENT OF FACTS: Rule 18, paragraph (a) (2) of the agreement between the Union Railroad Company and the United Steelworkers of America, Local Union 3263 reads complete as follows:

There have been many occasions in the past when the Crew Dispatcher's office posted advertisements and later canceled them prior to anyone being assigned thereto. The reasons jobs may be canceled after being advertised are many and varied. It may be that the need for the work disappeared after the advertisement was posted; there may have been an error in the advertisements; no bids may have been received; not enough extra board employees available, etc. Attached as Carrier's Exhibit G are some examples of advertisements being posted (prior to the incident in question) and subsequently canceled prior to any awards being made on a regular basis. To the best of our knowledge, no complaints were raised by the organization in any such case prior to the protest made in the within grievance.

As the Carrier understands the organization's position, they are contending that paragraph (F) (2) of the Memorandum of Understanding dated April 1, 1956 was violated when the Carrier canceled the two trainee advertisements on August 10, 1966. In addition, the organization alleges that the advertisement was canceled because the claimant, George McCrea, President of Local 3263, bid in the assignment.

(Exhibits not reproduced.)

OPINION OF BOARD: Succinctly stated, the Carrier advertised by bulletin for a position in the Assistant to the Superintendent's office. Prior to the closing time for acceptance of bids, Carrier unilaterally canceled the bulletin. Claimant having submitted an application for the position, maintains that Carrier's action constituted a violation of Rule 18, paragraph (a) (2) of the Agreement between the parties as well as paragraph (f) 2 of the Memorandum of Understanding effective April 1, 1956.

From a review of the evidence of record, Carrier had a good and sufficient reason for canceling the bulletin, that being a shortage of unassigned Yard Clerks at the time of cancellation. Had the bulletin remained operative and had Claimant been assigned to the position in question, the shortage would have been further aggravated. Be that as it may, an analysis of the Agreement and the Memorandum of Understanding upon which this claim is based, reveals that Carrier had every right to cancel the bulletin in the absence of specific language prohibiting such action. The language of the Agreement and Memorandum of Understanding does not proscribe that which Carrier has done. Except insofar as it has limited itself by Agreement, all rights remain with the Carrier. The burden of proof is in the Petitioner to show that some Rule of the Agreement was violated. Petitioner has failed to sustain such a burden. We will deny 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 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 18th day of October 1968.