NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21895

THIRD DIVISION Docket Number SG-21898

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad company:

The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope and Rule 47 (a) paragraph 6, by not extending Bulletin No. 526 dated December 20, 1974 to the Baltimore West End Seniority District.

Claim (a):

That the Carrier now be required to accept a late bid from Mr. T. R. Gillespie, ID No. 1510052, Monongah Division, home seniority district, but was furloughed from this seniority district and was working on the Baltimore West End and should receive a seniority date on the Cumberland Division Seniority Roster as of January 3,1975.

(b):

Mr. T. R. Gillespie should now be allowed $3.00 per day under the 298 Award from the time a new man was hired, who was Mr. L. Weaver. This claim of $3.00 per day continue as long as this violation exists, as Mr. Gillespie did occur expenses while working away from home. (Carrier file: 2-SG-439)

OPINION OF BOARD: There are two separate and distinct issues involved in this docket, namely:

(a) The correct roster standing of claimant vis a vis Signal Helper L. Weaver, and

(b) A claim for "meal allowance expenses" under the provisions of Award of Arbitration Board No. 298.

We will deal with these issues separately.

The operative facts relative to the seniority issue are reasonably clear. Claimant Gillespie, while on furlough from the Monongah Division (his "home" district) made application for and was awarded a position covered by the Signalman's Rules Agreement on the Baltimore Division, West End. While working on the Baltimore Division, West End, a Signal Helper position was bulletined on the Cumberland Division for which no bids were received. Therefore, Mr. L. Weaver was hired as a new employe and assigned to the position effective January 6, 1975. The crux of the contention here is that the Cumberland Division bulletin was not made available to the employes of the Baltimore Division, West End as required by Rule 47(a) 6 which provides in pertinent part as follows:

> "(a) After the closing time for receiving bids the position will be awarded by one of the following procedures in the order indicated:
>
> "* * * * * * * * * *
>
> "6. By extending the bulletin to other seniority districts in the same Region, but nothing herein will. be construed as requiring the assignment of a non-applicant to a position on other than his home seniority district. * * *."

Petitioner contends that if the provisions of Rule 47(a) 6 had been complied with, claimant would have made application for the bulletined position and thereby would have established seniority standing on the Cumberland Division ahead of Mr. Weaver. Petitioner argues that this contention is believable because of the fact that claimant did - in fact - make application for and was awarded a similar position on the Cumberland Division within two (2) months after Mr. Weaver was employed. Petitioner presented, on the property, an affidavit from claimant in which he alleged that neither he nor his foreman nor his supervisor on the Baltimore Division had received the bulletin which resulted in Mr. Weaver being employed.

Carrier, on the other hand, offers this Board no evidence to show that the Cumberland Division bulletin in question (Bulletin No. 526) was -in fact - posted on the Baltimore West End Division. Carrier candidly admits that the Award to Bulletin No. 526 was "for some inexplicable reason -- not sent to the Baltimore West End Division". Carrier further admits that a subsequent Cumberland Division bulletin (No. 502) also "had not been distributed to the Baltimore or Monongah Division ---".

It was through this latter error, that was later rectified by the posting of Bulletin No. 504, that Claimant Gillespie subsequently acquired a position and established seniority standing on the Cumberland Division effective February 21, 1975.

The Board has made an extensive examination of this record and has considered the assertions advanced by both parties. It is our conclusion that Carrier's reliance on the contention that, because the Baltimore West End Division Superintendent's name appeared on the advertising bulletin, it, therefore, must have been posted on that division, is not reasonable. All that shows with certainty is that the bulletin was properly prepared. It is not unreasonable to conclude that - like the Award to Bulletin No. 526 or like Bulletin No. 502 - this bulletin too was "for some inexplicable reason --- not sent to the Baltimore West End Division". Clearly some positive refutation to claimant's affidavit was indicated. None was presented. Therefore, it is this Board's decision that, based on the circumstances *present* in this case, Claimant Gillespie should be listed on the Cumberland Division seniority roster with a date of January 3, 1975, immediately ahead of Mr. L. Weaver.

As for part (b) of this case which asks for payment of "$3.00 per day under the 298 Award", the Board is unable to find any justification for or Rule support of such a payment. The Cumberland Division position in question was not in any way involved witii any application or provision of either Appendix "E" or Rule 41 of the Agreement - each of which relate to Award of Arbitration Board No. 298.

Therefore, part (b) of the subject must be and is denied.

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 violated in regards to Rule 47(a) 6.

A W A R D

Claim sustained in part, as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.