

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22032
Docket Number SG-21996

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Missouri Pacific
Railroad Company:

...account the assignment of a junior Signalman, J. A. Kelly
- Palestine, Gang 1373, to the Trinity maintenance position, advertised
by Bulletin No. 24 dated December 20, 1974, over senior Signalman
E. J. Markle, Signal Maintainer at Spring, Texas.

* * *

It is our position Markle's seniority rights were violated when the Carrier failed to follow the provisions of Rules 406 and 407 of the Signalmen's Agreement. We therefore respectfully request that, (1) Markle promptly be assigned and transferred to the Trinity maintenance position; and, (2) effective January 16, 1975 and continuing until request (1) above is granted, he be additionally compensated at the Signalmen's rate of \$6.31 per hour under the off-territory Agreement of July 31, 1970 and January 18, 1972 for all service performed on the Spring maintenance position (additional half-time during working hours Monday through Friday; and, additional time and one-half outside working hours Monday through Saturday and on holidays). The amount claimed is the amount-he would have received had the Carrier honored his seniority and then required him to work off-territory on the Spring position.

In addition to the above, we request that Signalman J. A. Kelly be returned to his former position on Gang 1373 - Palestine, Texas, and paid for all time lost, moving expense, travel expense and meal and lodging expense incurred by him and his family in changing residence from the Palestine area to the Trinity area and return. We further request the same conditions be applied to all other employees effected by the improper assignment of Kelly to the Trinity maintenance position by Bulletin No. 1 dated January 6, 1975. [Carrier File: K 225-691]

OPINION OF BOARD: Prior to consideration of the merits of this matter, a procedural issue is raised by Carrier. The Claim herein, dated March 1b, 1975 was received by Carrier on March 12th (Registered Mail - Return Receipt). The issue triggering this dispute was Carrier's refusal to accept Claimant's late bid on a position filed by telegram on January 3, 1975. The position in question was assigned by bulletin to a junior **employee** on January 6, 1975. Thus, the event causing the claim was either Carrier's refusal to honor the late bid or the assignment on January 6. It is clear, -- therefore, that the Claim is barred under the 60 day provisions of Rule 701. It is noted that Petitioner filed a Claim, differing in remedy **from** the instant Claim, on January 20th, which was not pursued by Petitioner. It must be noted that even if the Claim had been timely presented, arguendo, Claimant committed a fatal error in not presenting his bid within the prescribed ten day period; it is evident that the information with respect to the vacancy had been distributed in typical fashion in accordance with the Agreement.

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;

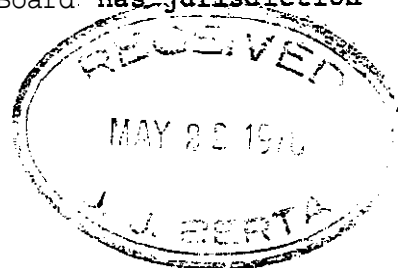
That the Carrier and the **Employees involved in this dispute** are respectively Carrier and **Employees** within, the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Claim was not timely.

A W A R D

Claim dismissed.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.