

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number 22131**
Docket **Number H-22195**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance of Way Employees**
(**Bangor and Aroostook Railroad Company**)

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

(1) **The** Carrier violated the Agreement when it refused to accept the bid of **Clair O. Wilmot** for the advertised position of painter (Bulletin No. 347, dated February 17, 1976) and

(2) the Carrier further violated the Agreement when it deprived and/or took from **Clair O. Wilmot** his seniority as a painter and all rights inherent thereto.

(3) As a consequence of (1) and (2) above, the Carrier shall restore **Claimant Wilmot's** seniority and rights as a painter (cumulative) and shall reimburse **Claimant Wilmot** for all wage loss suffered as a consequence of the aforesaid violations."

OPINION OF BOARD: On "either February 18 or 19, 1976" 8 February 17, 1976 Bulletin was posted, which requested bids for one painter.

On February 27, 1976 **Claimant** submitted a bid for the position, by U.S. mail, which was received on March 1, 1976.

Carrier refused to honor the bid, but instead awarded the position to 8 junior applicant. Moreover, Carrier removed **Claimant's** painter seniority and his protected status.

Section 6(a) of Article III specifies the conditions of job posting and the **Organization** asserts that Carrier violated the mandates of that section.

Carrier notes that February 27 was the last day for accepting bids and **Claimant's** bid, which was mailed that day was not received until March 1. Further, Carrier asserts that **Claimant** delayed - at his own peril - because he was on notice that his position was to be

abolished on **February 20**. The bulletin specifically stated that bids were to be **recieved** in a designated office "...**up** to and **including** close of work...**February 27**..."

Claimant seeks **reinstatement** to the seniority roster of painters in the Bridge and **Building** Department, reinstatement of his "protected" status and **reimbursement** far all lost wages.

The Claimant's **qualifications** do not appear to be in issue in this dispute. **But**, both parties have **submitted sound** and convincing arguments to us concerning the matters which are in dispute, even though they deal with divergent portions of the total **claim**.

We have considered, at length, our function as as **appellate body** without a disposition to dispense equity. At the same **time**, we are convinced **that** in this **case - and** without establishing **any** precedent hereby - the **only** possible solution is **areinstatement** of the Claimant to the painters' seniority group with seniority and protection rights **unimpaired** so **as** to **permit - and require - him** to use such seniority rights on subsequent painter **assignments** which **become** available. Further, **Claimant** shall not be considered as **having** been placed in a worse position with respect to compensation during the **period of time until** he can again hold a painter's position. All **monetary portions** of this **claim** are 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 **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.

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Claim disposed of in accordance with the Opinion of the
Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST : *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of June **1978.**