NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22214

THIRD DIVISION Docket Number CL-22196

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

(Southeastern Demurrage and Storage Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-8404, that:

"(a) The Bureau has violated the Rules Agreement, particularly Rules 5 and 6 by failure to post for bid a vacated position and therefore prohibiting the Claimant from exercising his seniority rights thereupon.

(b) Claimant G. H. Waldo should be paid at his respective regular basic rate of pay at the straight time rate for a day's pay for each of the regular assigned days of Ms. J. A. Mason's former position, commencing February 2, 1976 and continuing until this dispute is settled."

OPINION OF BOARD: A demurrage clerk position was bulletined January 20, 1976. Bids closed January 25, 1976. There were two applicants, J. A. Mason and J. R. Flaming. Fleming was junior to Mason in seniority. The demurrage clerk position was awarded to Fleming. However, in reality, the Carrier transferred Mason from her demurrage clerk position and assigned her to the demurrage clerk position awarded to Fleming. Fleming ns assigned to the duties of the position formerly held by Mason. In other words, the Carrier had Fleming and Mason switch positions.

The Organization contends that according to the rules, Mason should have been awarded the bulletined position. They also contend that her former position should have been bulletined, and because it was not, the Claimant, Waldo, was prohibited from exercising his seniority rights to the Mason position. They further contend the appropriate remedy is to award Waldo pay for each day until he is allowed to bid on the former position of Mason.

The Carrier contends that the procedure they followed -was in accordance with past practice relative to bulletins. It is also urged that Waldo was on a medical Leave of absence and could not submit a bid and that Waldo did not lose any wages because he was not available for service.

Relative to the contention of the Carrier concerning past practice, we must note that Rule 6 is clear and unambiguous and even if past practice had been established, it does not nullify the clear requirements of Rule 6. It is apparent the Carrier violated the Agreement when they faiied to bulletin the former position of Mason.

We also must dismiss the argument of the Carrier that Waldo could not submit a bid on a position while on a leave of absence. The record reflects that the Carrier invited Claimant to exercise his seniority after his position was abolished while he was on leave of absence. It is clear there is a practice to allow employes to use seniority rights while on a leave of absence.

Waldo did have the right to bid on the former position of Mason, had it been bulletined. However, equally clear in tine record is that Waldo was not in a position to work the former position Of Mason even if it had been bulletined. He was on a medical leave of absence. Waldo did not bid on the Mason position when it was properly bulletined in August. In view thereof, his claim for compensation will be 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 Agre-t was violated.

A W A R D

Part (a) sustained; Part (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos

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