

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22646**
Docket **Number** MS-22762

John J. **Mangan**, Referee

PARTIES TO DISPUTE: (S. A. Norvilas
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "This is to serve notice, as required by the roles of the National Railroad **Adjustment** Board, of **my** intention to file an **ex** parte submission on January 19, 1979 covering an unadjusted dispute between myself and the Illinois Central Gulf Railroad **involving** the question:

'Should S.A. Norvilas be awarded Relief Position **#8**,
Belt Tower? '"

OPINION OF BOARD: The factual situation involved **in** this **dispute** is reasonably clear. We find a situation in which a permanent vacancy was bulletined indicating an improper work location. After three (3) days had elapsed, the error was detected and a correction bulletin was issued. Subsequently, at the request of the Organization's Representative, the **original** bulletin was cancelled and a new correctly worded bulletin was posted for the full advertising **period** as required by the applicable agreement rule.

Claimant had submitted an application for the bulletined position on the basis of the first advertisement. As a result of the re-bulletining of the vacancy, an **employee** senior to claimant bid for **and** was awarded the position.

Claimant alleges that the m-bulletining of the vacancy was solely an **accommodation** for the senior bidder whose application had not been timely received by Carrier.

Carrier argues that the re-bulletining was as a result of the request received from the Organization's Representative and **stemmed** from the fact that the correction notice relative to the proper work location did **not** allow all **employees** the full ten (10) day advertising period which is called for in the bulletining rule.

Carrier further contends **that** because there was no conference held on the property to discuss this grievance, it is defective on its face and cannot be considered on its **merits** by this Board.

The case law on this issue of an on-property conference is clear and consistent. Section 2, Second of the Railway Labor Act, as amended, is mandatory in its requirement that disputes shall be considered and, if possible, be decided "in conference". For example, in Third Division Award No. 17166 (Jones) we find:

"The Railway Labor Act requires that before a dispute should be appealed to the Board for a decision, the parties to the dispute should hold a conference on the property to try to reach **settlement**. This concept was upheld by the United States Supreme Court in Brotherhood of Locomotive Engineers vs. Louisville and Nashville Railroad Company, 373 U.S. 33. The reasoning behind this provision is simple--to ensure that the parties **meet** and try to reach some agreement between themselves in as harmonious fashion as possible. It is only after such a meeting or conference is held and only after the parties cannot reach agreement on the property that this Board's jurisdiction becomes valid."

See also Award Nos. 21440, 14873, 11737 of this Division.

The absence of an on-property conference in this case is a fatal flaw and is sufficient justification for dismissal.

However, even if we were somehow able to **overcome** this fatal defect, **we** would still be unable to find in favor of **claimant**.

There is no showing in the record of this case that Carrier violated any **agreement** rule. In fact, the opposite appears to be the case. The agreement rule requires that all advertising bulletins be posted "for a **period** of ten days" and that the job "location" be shown on the bulletin. Neither of these requirements were met by the initial advertising bulletin in this instance. There was, **in** addition, a **valid agreement** between the respective parties - Carrier and General Chairman - to re-bulletin the vacancy to comply with the requirements of the agreement rule. Such action cannot be used as a basis for a grievance against the Carrier.

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 not violated and the claim is barred.

A W A R D

Claim dismissed.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of **November 1979**.