

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23436
Docket Number CL-23193

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8953)
 that :

1. Carrier violated the effective Clerks' Agreement when it failed to post an advertising bulletin for Position GE-Vac. #12 at its Whiting, Indiana office until after the period for bidding had elapsed, thereby denying Clerk Helene M. Krause the opportunity to bid this position;

2. Carrier shall now compensate Ma. Krause for (1) the difference in the rate of pay between her assignment (GT-357) and Position CT-Vat. #12 for each work day for her work week which is also a work day of Position GT-Vat. #12; (2) eight hours' pay at the time and one-half rate of GT-357 for each day Claimant is scheduled to work which is a rest day on GT-Vac. #12; (3) eight hours' pay at the pro rata rate of GT-Vat. #12 for each work day of that, position which is a rest day of GT-357; commencing on June 19, 1978 and continuing for each and every day thereafter that Claimant is denied GT-Vac. #12.

OPINION OF BOARD: Claimant, H. M. Krause, has a seniority date of September 1, 1966 in District No. 4. District No. 4 comprises, among other locations, Carrier's facilities in Whiting, Indiana and South Chicago, Illinois.

On June 13, 1978, Claimant was a clerk assigned to Position GT-357, Chief Rate Clerk, with a daily rate of \$60.1221. Claimant was working at Carrier's facility at Whiting, Indiana.

On June 13, 1978, Carrier issued Bulletin No. 251 advertising Position No. GT-Vat. #12. This was a temporary vacancy at South Chicago, Illinois, having a daily rate of pay of \$65.7416. The position was advertised for the period of June 19 to August 20, 1978.

On June 19, 1978, Carrier awarded the position to the senior applicant, O. A. Jackson. Jackson is junior to Claimant. It is undisputed that Claimant did not apply for the position prior to June 18, 1978.

The Organization claims that Carrier violated Rule 9 of the Agreement regarding the bulletining of new positions and vacancies. Specifically, the Employees assert that Bulletin No. 251 was not posted in Whiting, Indiana, until June 19, 1978, the day after the bidding period closed,

The **Organization** contends that Carrier's action deprived Claimant of a **position** which she desired and possessed the necessary qualifications, including seniority, to obtain. It asks that Carrier be directed to compensate **Claimant for:**

1. The difference in the rate of pay **between her assignment (GT-357) and Position GT-Vat. #12** for each work day of her work **week** which is also a work day of Position GT-Vat. **#12;**

2. Eight hours' pay at the time and one-half rate of **GT-357** for each day Claimant is scheduled to work which is a rest day on **GT-Vac. #12;**

3. Eight hours' pay at the pro rata rate of **GT-Vac. #12** for each workday of that position which is a rest day of **GT-357; commencing on June 19, 1978** and continuing for each and every day thereafter that Claimant is denied GT-Vat. **#12.**

Rule 9 states, in relevant part,

"(a) All new positions, **permanent** vacancies and temporary vacancies of twenty-five **(25)** or more calendar days known duration shall be promptly bulletined in agreed upon places accessible to all **employees** affected for a period of five **(5)** calendar days in the seniority district where they occur, bulletin to show location, title and **description** of position, rate of pay, assigned hours of service, assigned meal period, assigned rest days and, if temporary, the probable or expected **duration.**"

Thus, since the position in question fell under the terms of Rule 9(a), Carrier was **required** to post the position for a period of five **(5)** days prior to awarding the position. This is the clear purpose of Rule 9(a).

Based on the evidence **in** the record, this **Board** is of the opinion that the bulletin **in** question was not posted at Whiting, Indiana until **June 19, 1978.** We are convinced that Carrier's failure to post the position was not purposeful. Instead, **we** are persuaded that it was due to a mere oversight.

In any **event**, the Agreement was **violated.** Clearly, Claimant is entitled to be compensated for the loss of opportunity to obtain a position she was entitled to receive.

However, we believe that the **Organization's** list of suggested remedies is inappropriate. Instead, we will pay Claimant the difference in earnings between what she would have earned had she bid and been awarded Position GT-Vat. **#12** and what she actually earned while occupying Position GT-357. All other requests for payment are specifically rejected.

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 violated.

A W A R D

Claim sustained to the extent **indicated in** the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division



Attest: _____
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.