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D.U.P.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23941
Docket Number SC-23955

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the Agreement effective October 1, 1973, between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly Rule 53.

(b) Signal Department Notice No. 22, Rio Grande District, dated August 24, 1979, be reissued and copies furnished to all employees as provided by Rule 53." (Carrier file: SIG 16-47)

OPINION OF BOARD: This dispute involves Rule 53 of the Schedule Agreement, which provides in pertinent part as follows:

"RULE 53. Assignments To New Positions or Vacancies

Assignments to new positions or vacancies shall be made after advertisement notice has been posted for a period of fifteen (15) calendar days on bulletin boards of signal gangs and copies sent to all employ.3 entitled to consideration in filling the position and to the local chairman, during which time employes may flle their application with the official whose name appears on the notice. The appointment shall be made and the name of the successful applicant announced within a period of twenty (20) calendar days from the posting of the notice."

It appears that on Signal Department Notice No. 22, dated August 24, 1979, a vacancy was advertised for bid on a permanent position of Special Signal Technician with headquarters at El Paso. The notice was posted on bulletin boards and mailed to employes assigned to work out on the line, according to Carrier. The Seniority District in question had twenty-two signal employee at nine headquarter points. Subsequently the position was awarded to Mr. R. J. Simpson. The Claim herein was filed on behalf of a senior Leading Signalman, Mr. Warren based on his contention that he never received a copy of the bulletin. Later, the other three Signalmen located at Deming, New Mexico also indicated that they had not received copies of the Bulletin. There was also undisputed evidence that the vacancy had been discussed with all the signalmen at Deming between August 27 and 30, 1979, prior to the position being awarded-to Mr. Simpson, and therefore all the men were aware of the vacancy.

Petitioner argues that even if the Bulletin had been mailed to the signalmen at Deming, it was never received by them and hence the contractual procedure was not complied with by Carrier. It is concluded by the Organization that the only recourse is for Carrier to reissue the Notice so that all employes who might be interested in the position have an opportunity to bid on it.

Carrier points out that it complied with the requirements of Rule 53 when it mailed copies of the Bulletin to the employes at Deming (among others). Further, it is argued that there are no damages to any individuals alleged in this dispute and in addition the signal crew at Deming was aware of the vacancy in timely fashion. Carrier also asserts that there is no contractual provision for readvertising a vacancy and no useful purpose could be served by doing so, in any event.

The Board notes that letters (including the bulletin) were mailed to the signalmen at Deming in one envelope in care of the Carrier Agent at that location. This could be construed as a failure to mail the bulletins to the individuals entitled to receive them in accordance with the rule. Without holding that the Carrier is at fault in this circumstance, since a good faith effort was obviously attempted by the Carrier (and the employes were aware of the vacancy), it is clear that the issue is currently moot. No useful purpose could possibly be served by reissuing the bulletin almost three years after the fact, and conceivably such action, even if warranted, could create new problems and inequities. For this reason, as well as the good faith involved in the Carrier's efforts, it is concluded that the claim must be dismissed. It must be noted, however, that in the future such bulletins should be mailed to individuals - not in a group to an agent.

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 issue is moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1982.