

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24172  
Docket Number MW-24362

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Burlington Northern Railroad Company  
{ (former St. Louis-San Francisco Railway Company)

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

(1) The Agreement was violated when the position of track foreman at Demopolis, Alabama as advertised by Bulletin No. 29 dated May 12, 1980 was awarded to an applicant junior to Track Foreman F. L. Lee (System File B-1131).

(2) The position of track foreman at Demopolis be awarded to Track Foreman F. L. Lee and he shall be allowed \$1401.60 (9344 miles @ 15¢ per mile) because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On May 12, 1980 the Company issued a position bulletin (No. 29) advertising a Track Foreman position and the bulletin stated that application should be sent to "the undersigned, where they will be received up to 1200 May 27, 1980." The Carrier received a telegram indicated that it was forwarded at 7:44 a.m. on May 27, 1980 - the final day for receipt of bids. However the document did not contain a signature or other information assertedly required by the scheduled Agreement and therefore it was not accepted. The position was awarded to an individual who was junior to the Claimant.

In denying the claim, the Carrier specifically pointed out that when the current Agreement was negotiated the parties discussed the fact that the Carrier would not accept "wire" bids because there had been problems in the past when people had indicated they were not actually the individuals who had forwarded the bid and also because wire did not contain the necessary information, etc.

On the property, the Organization indicated that "wire" bids have been accepted "all over the ...System" in the past and that neither the General Chairman nor the Employee had been advised that bids would no longer be accepted in that manner.

In response, the Carrier reminded the Organization that the Carrier provides a sample form for making application and that such an application is required in every instance and it denied that bids sent by wire are acceptable and it denied that such bids were considered in making assignments. In addition, the Carrier insists that on occasions in the past when wire bids were filed unless the employee additionally filed a bid slip on the approved form bearing his personal signature he was not assigned to the vacancy.

The Rule 37 of the Agreement merely specifies that applications for bulletined positions or vacancies will be accepted by the **officer** issuing the bulletin until 12:00 noon on the fifteenth calendar day from the date of the bulletin, with certain exceptions not here applicable. The bulletin advertising the position is silent as to the method of submitting an application. Thus it is incumbent upon the Board to determine if, under those circumstances, an application forwarded by telegram is acceptable or if, in some manner, the discussion which accompanied the negotiation of the language in question or the asserted past practice controls the dispute.

We find that the Awards given to us as precedent are of little value because they speak in terms of untimely applications and other matters in which the applicant failed to follow certain appropriate procedures.

In our consideration we have not been unmindful of Appendix 6 of the Agreement which sets forth various forms as samples for use in submitting bids however we are unable to find anything that mandates the use of those sample forms.

The Board is not unmindful of the Carrier's positions and contentions in this case and we **recognize** certain of the equitable concerns that the Carrier has set forth, however we are equally aware that a senior employe has been denied a position.

Assuming, without deciding, that the parties did discuss the fact that "wire" bids would not be accepted during a negotiation there is certainly nothing stated in the collective **bargaining** agreement that would warn an individual applicant. Moreover there is nothing on the bulletin which would forewarn an individual that he or she must use a specified sample.

The statement of past practice concerning "wire" bids is helpful only in a "negative sense" but there is absolutely no evidence of record to suggest to this Board that this Claimant had any knowledge that the "wire" bid was not acceptable and in the absence of such knowledge we are of the view that the bid should have been accepted or at least the applicant should have been notified of the need to send additional information and/or verification. To be sure, the Carrier can control this type of situation in the future by specifying the type of an application which must be submitted, but under the facts of this case we feel that the Claimant was not on notice that his "wire" bid was not sufficient. We will sustain the claim to the extent that we find that the Agreement was violated when this Claimant was not awarded the pertinent position and the Employe shall be made whole by the Carrier for not having been awarded the position and he should be compensated for any actual expenses incurred; but not for speculative expenses.

**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

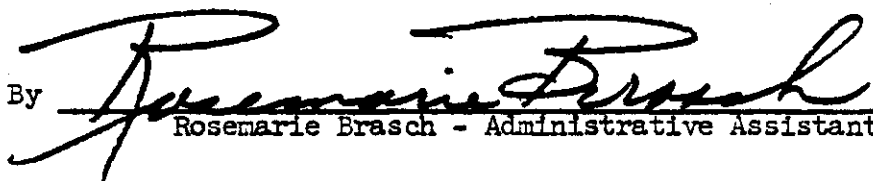
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.