

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24209
Docket Number MW-24107

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
[Detroit, Toledo and **Ironton Railroad Company**

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

(1) The carrier **violated** the Agreement when It failed to post '**Advertisement T-1829**' at the headquarters of '**A**' Gang and, as a consequence thereof, awarded the position advertised thereby to an **applicant** junior to H. P. **Moriarity**.

(2) Because of the **aforesaid** violation, Mr. H. P. **Moriarity** be **afforded** a seniority date as track **patrolman** retroactive to May 21, 1979."

OPINION a BOARD: This dispute turns on a question of **fact**. Petitioner argues that the Carrier failed to post an advertisement of a **position** resulting in the inequity triggering this Claim. Carrier, on the other **hand** contends that the **advertisement** was **indeed** posted and hence **there was no violation** of the Agreement.

The record reveals that the Organization's position is based on a letter signed by seven members of the gang which stated, inter alla: '**We the undersigned did not see this advertisement and many others until it was too late.**'"

The Carrier, through its **Engineer** Maintenance of Way and Structures, presented Its version as **follows:**

"In view of your letter dated June 14, 1979, stating that the **DTR&I** had violated the provisions of the Effective **Working Agreement** when it failed and refused to post a **Track Patrolman vacancy** with headquarters at Springfield, Ohio.

The **company** did post advertisement **T-1829**, advertising for one (1) Track **Patrolman** at Springfield, Ohio and said advertisements **were** sent to all **foremen in the M of W Department**.

Foreman J. W. Mullins on the "**A**" Gang states he had received the advertisement and handed it to Mr. **J. E. Wallace**, a **Trackman** on the "**A**" Gang, who posted the advertisement.

"On June 26, 1979, I spoke to Mr. Wallace questioning him if he did post this advertisement and he stated to me that he did.

The company must take the position of being unwilling to allow your request and it is therefore declined."

It is apparent that the statement of the seven employees is, on its face, insufficient to establish that the advertisement was not posted. However, even granting, **arguendo**, that Petitioner is correct in its position with respect to Carrier's deficiency, this **Board** is unable to resolve the factual **conflict** presented. It must be concluded, therefore, that Petitioner has not presented sufficient proof to prevail particularly in the face of the **evidence** proffered by **Carrier**. Consequently, the Claim must 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 **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 not violated.

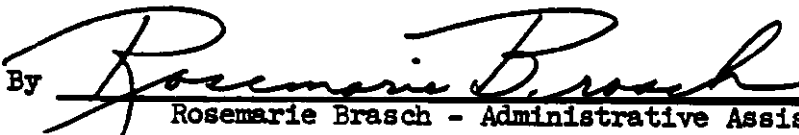
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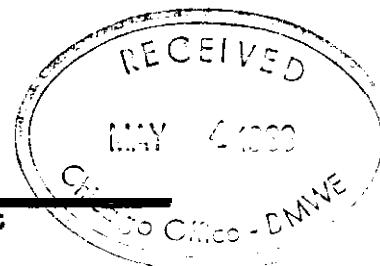
claim denied.

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 14th day of March 1983.