

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25919  
Docket Number MW-25824

Charlotte Gold, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( Seaboard System Railroad

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

(1) The Carrier violated the Agreement when it failed to post Bulletin No. TM-50 dated August 3, 1982 at the Headquarters of the Northern Region Rail Gang and as a consequence thereof, awarded the position advertised thereby to an applicant junior to L. E. Boyer [Carrier's File 12-14(83-68)-11 S].

(2) Because of the aforesaid violation, Mr. L. E. Boyer shall be assigned to the position of acetylene-electric welder advertised by Bulletin No. TM-50 dated August 3, 1982."

OPINION OF BOARD: On August 3, 1982, Carrier issued a Bulletin to all Maintenance of Way Employees on the former L&N Railroad, Monon Subdivision, indicating that applications would be received up to August 21, 1982, for an Acetylene-Electric Welder's position. The position was assigned to D. E. Harrell on August 31, 1982.

Two weeks later, Claimant, who was regularly assigned to a crane operator's position, alleged that he had just learned about the opening and informed the Division Engineer's Office that he had been denied an opportunity to apply for the position because Carrier had failed to post the Bulletin at the Headquarters of the Northern Region Rail Gang. An Administrative Assistant advised him to file an application, which he did, and it was ultimately denied by Carrier.

The Rule at issue in this dispute is Rule 12. That Rule reads in pertinent part as follows:

"RULE 12

Bulletin Notices

(a) When it is known fifteen (15) calendar days in advance that a position is to be established or that a vacancy of thirty (30) calendar days or more is to be open, such position or vacancy will be bulletined at once.

(b) Bulletin notice advertising new positions or vacancies will be posted for a period of ten (10) calendar days at the headquarters of the gangs in the sub-division of employees entitled to consideration in filling the positions, during which time employees may file their applications with the official whose name appears on the bulletin, sending copy to Local Chairman and General Chairman. Such bulletins will show location, descriptive title, hours of service and rates of pay of the positions bulletined. Appointments will be made within twenty (20) calendar days from the date the bulletin is posted. A bulletin of assignment listing name of successful applicant and all applicants in their seniority order will be posted on all bulletin boards on which bulletin advertising the new position or vacancy was posted. Copy of bulletins and assignments will be furnished General Chairman and Local Chairman."

At the outset, Carrier maintains that the Organization's claim is procedurally defective because the claim was not filed until November 4, 1982, more than 60 days after the occurrence of the event being grieved; thus, it was beyond the time limits prescribed in Rule 20. The Organization argues that neither the original Bulletin nor the Bulletin listing the successful applicant was posted at the Headquarters and that the time clock began running when Claimant became aware of the opening.

We agree with the Organization on this point. It is well established that employees cannot file grievances until they know or think that they have been aggrieved. In the present case, the question of whether the initial Bulletin listing the opening was actually posted on August 3, 1982, is at the center of this dispute and that issue cannot be resolved until the merits are considered. For our purposes here, we must assume that, regardless of whether the Bulletin was or was not posted, Claimant was not aware of its contents until mid-September and thus it was at that point when the time limits outlined in Rule 20 became operative.

As to the merits, Carrier, in its denial of the claim, pointed to the fact that another employee at Headquarters had applied for the position within the proper time period as proof that the Bulletin had been properly posted. If that in fact was the case, that constitutes convincing evidence that appropriate procedures were followed.

The Organization, however, responded in a letter dated January 29, 1983, that "It is true that he did see a Bulletin while working on the gang but he also said that the Bulletin he saw was not posted at the Headquarters as is required by Rule 12, Paragraph B, in our working Agreement. Sometimes Bulletins are handed from one employee to another without being posted...." In a letter dated May 14, 1983, the Organization acknowledged that some of the employees saw a Bulletin, but argued that this did not mean that it was in a proper place for everyone to see.

Based on these statements and other facts of the case, this Board must conclude that a Bulletin was issued by Carrier, that it was received at the Headquarters of the Northern Region Rail Gang, and that employees at that location did in fact see it. Absent specific evidence relating to Management's failure to post the bulletin properly, we must conclude that Carrier met its obligation in this matter.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.