

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26601
Docket Number MW-26208

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it awarded the trackman's position on the AFE Gang headquartered at Greenville, Ohio as advertised by Advertisement No. 35 dated April 11, 1983 to junior employee N. L. Reed instead of Mr. G. R. Broughman (System Docket CR-225).

(2) Because of the aforesaid violation, Mr. G. R. Broughman shall be compensated

'...eight hours a day five days a week from the effective date of April 25, 1983, and until this matter is straightened out."

OPINION OF BOARD: Certain facts are not disputed. The Carrier advertised a vacancy for a Trackman position at Greenville, Ohio in Advertisement #35 of the Columbus Division. According to the bulletin and the rules bids had to be submitted by 5:00 p.m. on April 18, 1985. Rule 3 Section 3 is controlling and reads:

"Advertisement and award.

(a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

(b) Advertisements will be posted on Monday or Tuesday and shall close at 5:00 p.m. on the following Monday. Advertisement will be posted at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions, during which time an employee may file his application.

(c) Application for new position or vacancy advertised under this Rule may only be made by active employees and must be prepared on Form CT-88, with receipt attached thereto, properly filled out, and filed with the official whose name appears on the advertisement, who will detach receipt, sign and return same to the applicant.

- (d) Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven (7) days after the close of the advertisement.

This Rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days.

- (e) An advertisement may be canceled within seven (7) days from the date advertisement is posted.

- (f) An employee who desires to withdraw his bid or application for an advertised position or vacancy must file his request, in writing, with the official whose name appears on the advertisement within seven (7) days from the date the advertisement is posted."

The Claimant submitted a bid for the position via U. S. Mail. The envelope was postmarked April 15, 1985. However, it was date stamped as received in the Division engineering office "APR 19 a.m." The Carrier assigned the position to a junior employee.

The Carrier's argument is that the postmark is irrelevant and that it was the Claimant's responsibility to assure delivery. Along these lines the wording on the bid form seems to contemplate personal delivery.

In times past, when seniority district and operating divisions were small the Carrier's position may have been reasonable. However, as a furloughed employee residing 100 miles from the division office it is reasonable--given the lack of specificity in the rule--for the Claimant to rely on the mail. In fact, the ultimate awardee also submitted his bid by mail on April 15. On the other hand, and as a general matter, the Carrier can't be expected to nullify awards once made just because a bid filed before the deadline is received after the deadline. It isn't reasonable under such circumstances to put 'Humpty Dumpty' back together again.

However, it is reasonable under these unique circumstances to expect the Carrier to have treated as valid a bid clearly submitted before the deadline but received after the deadline if they have not awarded the position at the time the bid is received.

This is a reasonable application of the Rules given the workings of the modern railroad and the wonders of the U. S. Post Office. It is reasonable since it balances appropriately the rights of all the employee and the administrative practicalities of making one award. Of course, this makes it incumbent on the employee to get his bid in as soon as possible so that the bid is not only postmarked before the due date but received prior to the actual awarding of the job. This can be at anytime after the bids are closed. If the employee cuts it "too close" he does so at his own peril.

This raises a critical factual question and that is--what point in time the award notice was actually issued. The Organization in its submission claimed the job was awarded on April 20, 1983, notably after the receipt of the Claimant's bid. However, this assertion cannot be confirmed in any of the correspondence on-the-property before the appeal to the Board. Accordingly, it would be improper to sustain the Claim on a factual assertion which had no foundation in the record properly before the Board.

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

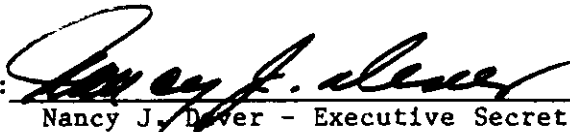
That the Agreement was not violated.

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 27th day of October 1987.