

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28150
Docket No. MW-27517
89-3-86-3-776

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company

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

(1) The Carrier violated the Agreement when it failed to notify Mr. C. L. Smith, III that he was the successful applicant for the position of bus driver (Job 10367) advertised by Bulletin No. GA-026 and when it refused to permit him to work that position (System File BN-23-85/DMWD 86-01-20).

(2) Because of the aforesaid violation, Claimant C. L. Smith shall be assigned to and permitted to work the bus driver's position referred to in Part (1) hereof and he shall be compensated for all wage loss suffered and expense incurred."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On September 15, 1985, Claimant was furloughed from Section District 16, Fort Collins, Colorado. That date he placed a bid on Bulletin G-026, dated August 30, 1985, Bus Driver Position No. 10367, for which he was qualified. That same date Claimant inquired if work was available to him in other districts and was told to contact the District Roadmaster on the Yellowstone Seniority District, who in turn advised him to report for work on September 16, 1985.

On September 27, 1985, bidding closed on Bulletin G-026. On September 30, 1985, the Yellowstone District Gang Claimant was working with moved from Miles City to Terry, Montana. On that date Claimant made an inquiry about the status of his bid for the Bus Driver position. On October 9, 1985,

while at home for a brief stay, he inquired again about assignment to the vacancy. He was told that he was not the successful bidder. He returned to the Yellowstone Gang and worked until October 17, 1985, when he was laid off. The next day he was advised that he was successful bidder and that he was to report for duty. Upon showing up for work the Foreman on duty refused to let him assume the assignment. It seems that an employee with greater seniority than Claimant had displaced on the position on October 14, 1985.

The Claim of the Organization seeks placement of Claimant on the assignment and payment for all wages losses suffered as well as expenses incurred while working on the Yellowstone District.

Carrier contends that any payment to Claimant would be an unjust enrichment. It was his responsibility to check bulletin boards to determine if he was the successful bidder. It also contends that Rule support is absent for the payment of any expenses Claimant may have occurred.

It is our view that Claimant is entitled to payment of any wage losses incurred between September 28, 1985, (the day after the bulletin closed) and October 14, 1985, (the day a senior employee took over the assignment) when he was not placed on Position No. 10367. Claimant made several attempts to determine if he was the successful bidder but was either given no advice on his status or was misled into believing that he was not the successful bidder. We are not impressed with Carrier's defense that they did not know how to contact Claimant, and were not required to do so, while he was working in another district.

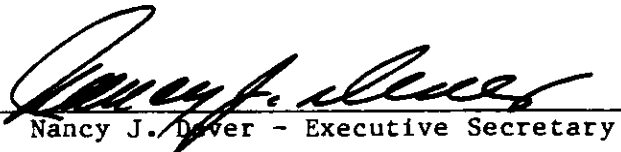
Accordingly, we will award that Claimant be paid the difference between what he earned and what he would have earned between September 28, 1985, and October 14, 1985, had he been assigned to Position No. 10367. We will not award payment for expenses incurred while working on the Yellowstone District.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.