

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10111) that:

1. Carrier violated the Clerks' Agreement when it refused to allow Clerk V. A. Delay to displace junior employee on position of Star Agent, Auburn, Nebraska, effective July 16, 1984.
2. Carrier's action in the instant case is in violation of Rule 2, Paragraph 2, Rules 4, 7, 13, 14 and 18 of the Agreement between the parties.
3. Carrier shall now be required to place Claimant Delay on the position of Star Agent, Job No. 847, Auburn, Nebraska, compensating him at the rate of said position, \$2,673.75 per month."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 3, 1984, the Organization filed a Claim on behalf of the Claimant alleging that the Carrier was in violation of several Rules of the Agreement, in particular Rule 2, Paragraph 2, which reads in pertinent part:

"The following agency positions will remain Star Agency positions as long as the present incumbents remain assigned to said positions, but when the present incumbents are separated from said positions for any cause, including, but not

limited to, resignation, death retirement, dismissal, or displacement through the exercise of seniority pursuant to Rule 14, said positions will become subject to all the rules of the consolidated Agreement, except this Rule 2, and the daily rate of \$44.41 will apply, subject to subsequent general wage adjustments."

The Organization contends that by denying the Claimant the right to displace a junior employee on the position of Star Agent at Auburn, Nebraska, the Carrier violated Rule 2. Remedy requested is that the Claimant be placed in the position at the applicable rate.

The Board has held on numerous occasions that agreements between the parties must be viewed as a whole in determining their application to particular situations. Paragraph 2 of Rule 2, standing alone, tends to support the Organization's Claim. But the Board cannot apply this portion of the Agreement while ignoring Rule 2(e). The latter reads:

"(e) Positions marked with a star \* are to be filled jointly by the Operating, Traffic and Accounting Departments from the ranks of employees covered by this Agreement in the employ of the Carrier who have accumulated one year or more of seniority under this Agreement except as hereinafter provided. Vacancies in these positions will be bulletined to the seniority district within which such vacancies occur for a period of seven (7) days, and will be filled within thirty (30) days. All employees covered by this agreement holding seniority in the seniority district where such vacancies occur shall have the right to apply for such vacancies but consideration will be given only to those applicants who have accumulated one year or more of seniority." (emphasis added)

Rule 2(e), therefore, creates an exception that allows the Carrier to reject bids for such positions when the bidder is not approved by the Operating, Traffic and Accounting Departments. Such happened here. The Claim must, therefore, be denied. Public Law Board No. 3314, Award No. 5, on this property, between the same parties, reached an identical conclusion in a case with striking similarities.

Form 1  
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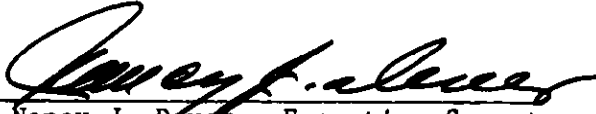
Award No. 28228  
Docket No. CL-27334  
89-3-86-3-550

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.