

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28922
Docket No. MW-28872
91-3-89-3-272

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The Carrier violated the Agreement when, on September 7, 1987, it advertised two (2) 16 tool tamper operator positions under Numbers 73 and 74-ACY-0987, without making them 'contract' positions (System File NEC-BMWE-SD-2158).

(2) The appeal as presented by District Chairman W. K. Manning on January 12, 1988 to Assistant Chief Engineer J. J. Cunningham shall be allowed as presented because said appeal was not disallowed by Assistant Chief Engineer Cunningham in accordance with Rule 64.

(3) As a consequence of either/or both Part (1) and/or Part (2) here-of, the "... two (2) senior, qualified, employees possessing Southern District EWE seniority who are not working positions paying the EWE 'A' rate and who would be eligible to make application for a contract tamper position advertised pursuant to the May 21, 1979 Agreement. *** shall be allowed pay for all time worked by the employees assigned to the above-described positions at the EWE 'A' rate of pay including the \$.55 per hour incentive provided for 'contract' tamper operator positions."

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 July 13, 1987, the Carrier advertised two Engineer Work Equipment - "A" Class (EWE-A) Tamper Operator positions in connection with its Atlantic City Line. There were no qualified applicants. On September 7, 1987, the same positions were again bulletined. At a grievance meeting on September 24, 1987, the Organization raised the contention that the positions should have been advertised as "contract" positions under the Tamper Agreement of May 21, 1979. The reply given by the Carrier Representative at the September 24 meeting was that "There is no requirement that tamper operators be contracted. We do not feel it is necessary to contract someone for this project."

Thereafter, the Organization initiated two Claims on October 22, 1987. The Claim for consideration here was directed to the Atlantic City Project Manager (not the correct individual for this purpose) on behalf of:

"the two (2) senior, qualified, employees possessing Southern District EWE seniority who are not working positions paying the EWE 'A' rate and who would be eligible to make application for a contract tamper position...."

Although not the proper individual to receive the Claim, the Project Manager nevertheless replied, denying the Claim. Thereafter, the Claim was timely appealed to the Assistant Chief Engineer, and the Organization seeks to have the Claim sustained on the basis (among other reasons) that the Carrier failed to meet the time limits for such reply, pursuant to Rule 64.

There is, however, a complication. Also on October 22, 1987 (the same date as the Claim described above), the Organization filed a virtually identical Claim with the Assistant Chief Engineer, who is supposed to receive appeals but not initial Claims. Nevertheless, the Assistant Chief Engineer replied to the Claim. It was further progressed and answered by the Director-Labor Relations, who objected both to the duplicate Claims being progressed and to the failure to direct the initial Claim to the proper individual. It must be noted that the Claim initiated with the Assistant Chief Engineer is not before the Board for resolution.

Returning now to the Claim at hand, the Board cannot accept the Organization's view that the Claim must be sustained on the basis of the Carrier's failure to make an appeal response. This is for two reasons.

First, the Carrier raises an objection that the Claim does not specify particular Claimants, but rather uses more general terms as quoted above. The Board is fully cognizant that there are situations where the naming of a particular Claimant may not be required, particularly where necessary information is in the singular possession of the Carrier. This is not the situation here. There is simply no showing that there were employees who may have responded to the advertisement if it had been designated as a "contract" position. There is no showing of any adverse effect on any employee who would have been qualified. It is only reasonable that the Organization be required to specify which particular employees were adversely affected and under what circumstances. The Claim must therefore be found improperly initiated. As stated in Third Division Award 28596:

"We have closely examined the record in the instant Claim and must conclude that Carrier is correct that the Claim is barred on procedural grounds. We are cognizant of those prior cases in which the Board has held that Claimants need not be specifically named in a claim in order for the claim to be sufficient, but that the aggrieved must be described with sufficient particularity so that the Carrier can readily identify same. (See e.g., Third Division Award 11372.) It is the Organization's burden, however, to prove that the identity of the aggrieved can be readily ascertained by the Carrier. In this case, while the Claim describes an incident, cites an Agreement alleged to have been violated and the date the alleged violation commenced, it is not at all clear who was aggrieved."

Thus, the Carrier's later failure to respond to the appeal is without significance, in view of the Claim's initial deficiency.

It is noted, however, that the Claim also seeks to have the position "advertised and/or readvertised." This leads to the second reason for finding the Claim deficient. This request as to re-advertisement is the sole burden of the second October 22, 1987 Claim, discussed above. This Claim is entirely duplicative of the second Claim, which was fully developed on its own through the Claim handling procedure. Thus, the dispute as to whether the positions should be re-advertised was in the hands of the parties in the second Claim and needs no resolution here.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Oliver - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.