

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30244
Docket No. SG-30877
94-3-92-3-717

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Consolidated Rail Corporation (CONRAIL):

- (A) Claim on behalf of Signal employees and members of BRS Local 80, working below the class of Electronic Specialists in Conrail Seniority District #9, on account Carrier violated the Signalmen's Agreement, particularly Rule 2-A-1(d) and (e) and Appendix 'P', Section A, when it assigned Mr. K. E. Kudrewicz to the position of Electronic Specialist at Selkirk CATDF, without first advertising the position for bid.
- (B) Carrier should now be required to properly bulletin the Electronic Specialist position, and compensate those Claimants an amount equal to the earnings of Mr. Kudrewicz, for all time that the violation is allowed to continue; the sum total to be divided equally among the Claimants." Gen'l. Chmn's. File No. RM2166-80-991. Carrier's File No. SG-363. BRS File Case No. 8864-CR.

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 employe 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.

The pertinent rule requires that all positions and vacancies, with certain exceptions not here pertinent, shall be advertised in the appropriate seniority district within ten (10) calendar days from the date they occur. Advertisements will be posted on Wednesday at the headquarters for a period of seven (7) days.

The Organization submitted a claim asserting that the Carrier hired a new employee (Kudrewicz) to the position of Electronic Specialist at Selkirk (CATDF). It is asserted that the position was not advertised, as required by the Agreement.

There is no disagreement that the Carrier assigned the new employee to the position on February 19, 1991. However, the Carrier advises that it had advertised the position, starting in February of 1990, on a total of seven (7) different occasions and no qualified applicant ever bid for an Electronic Specialist position. The last advertisement was in September of 1990.

The Organization asserts that the bulletins were not properly distributed in accordance with the rule, and some of the employees indicated that they were not aware of the postings.

The Carrier has noted the fact that the claim has failed to identify a specific claimant or claimants, and it has no basis to conclude that there was any qualified claimant for the position.

The parties have argued various precedental awards concerning the need to specifically identify claimants. Without entering into that dispute, it appears rather clear that it is not necessary under all circumstances to specify an individual claimant by name if the context of the claim is relatively clear, and establishes a basis for redress. However, in this case, it would appear that the failure to be more specific in the claim is fatal to a sustaining award.

The record seems clear that the employer posted the position on a number of occasions within the year preceding its filling of the position with an outside employee. From our review of the record, it would appear that the employees certainly had notice of the employer's quest.

When the Organization submitted a claim in this case, it was not specific and that was pointed out to the Organization on the property. It would certainly appear, at that point in time, that the Organization had an obligation to advise of any particular claimant who might have been qualified for the position. The failure to do so legitimizes the employer's defense and we will deny the claim.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.