

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31068
Docket No. SG-31297
95-3-92-3-845

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Union Pacific Railroad (UP):

Claim on behalf of M.A. Stecki for assignment to the position of Retarder Yard Maintainer and for all lost compensation on account Carrier violated the current Signalmen's Agreement, particularly Rule 38, when it failed to properly post job bulletins and awarded the Retarder Yard Maintainer position to a junior employee. Carrier's File No. 910759. BRS File Case No. 8888-UP."

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 employee 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.

This dispute involves an assertion by the Organization that Claimant has been deprived of the opportunity to bid for and be assigned to a Retarder Yard Maintainer position which was bulletined by Carrier and subsequently awarded to a junior Signalman. The Organization argued that Carrier failed to post the advertising bulletin as required by Rule 38 of the Agreement.

Rule 38 reads, in pertinent part, as follows:

"RULE 38 - BULLETINED POSITIONS

(a) New positions and vacancies, excepting positions of Assistant Signalmen and Assistant Signal Technicians, which are expected to be of more than six months' duration shall be advertised as permanent within thirty (30) calendar days previous to or ten calendar days following the date such new position is created or a vacancy occurs. New positions and vacancies of more than thirty (30) calendar days and less than six months' duration shall be advertised within the above time limits as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been advertised as temporary and does in fact exceed six months, shall be readvertised at the end of six months as permanent. Bulletins showing location, title, hours of service and rate of pay will be made accessible to the employees affected for a period of ten calendar days. In gangs, bulletins will be posted on a bulletin board in the tool car. Employees desiring such positions shall file their application with the designated official, with copy to Local Chairman, within that time and an assignment will be made within five calendar days thereafter. Employees affected and the Local Chairman will be promptly advised of the assignment made. When an employee's location of headquarters is changed, position will be bulletined."

From the case record as developed by the parties during the on-property handling of this dispute, the following facts are apparent:

1. Carrier issued an advertising bulletin on July 22, 1991, which contained, among other vacancies, the position here in contention.
2. Claimant was away from his assigned position because of being on vacation which began on July 22, 1991, and continued through August 8, 1991.
3. The assignment of the junior employee, who was the only applicant for the position, was made effective August 6, 1991.

4. Upon his return from vacation, Claimant submitted on August 12, 1991, a bid for the position in question. His bid was rejected as untimely.

In defense of its position, Carrier argued that the advertising bulletin had been properly posted; that Claimant's bid came too late for consideration for the position; that, in any event, Claimant did not possess the appropriate radio license which was required for assignment to the position in question.

From our review of the record in this case, the Board finds several points of concern. First, there is a statement by the Organization that the advertising bulletin was not posted in the "tool car" of the gang to which Claimant was assigned. No exception is voiced to Carrier's contention that the bulletin was posted "in the usual manner" or that there is no tool car assigned to the gang" and there has not been one within the memory of anyone now there." With nothing more on which to make a determination, the Board is unable to say whether or not the bulletin had been properly posted.

Secondly, and of more significance in our determinations of this dispute, is the fact that Claimant was off duty observing his vacation during the entire bulletining period. Claimant would not have seen the bulletin because of his absence on vacation.

Thirdly, and of most significance in our determinations of this dispute, is the fact that the record is completely devoid of any evidence that Claimant possessed the radio license which is required for assignment to the position in question. Therefore, the issue of proper posting of the bulletin is moot at best and is not determinative in this case.

On the basis of the relative convincing force of evidence as found in this case, the Board concludes that there has been no proven violation of Rule 38.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.