

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31255
Docket No. MW-30899
95-3-92-3-728

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

- (1) The Carrier violated the Agreement when the Carrier advertised a trackman casual driver position within Bulletin No. 18 and failed to award said position in compliance with the provisions of Rule 3, Section 3 and then abolished the position under date of April 25, 1991 in violation of Rule 6 (System Docket MW-2100).
- (2) As a consequence of the aforesaid violation, the senior furloughed trackman shall be allowed forty (40) hours' pay at the trackman casual driver's straight time rate of pay."

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.

There is no dispute on the following. The Carrier posted a position advertisement dated April 15, 1991, as part of Bulletin No. 18 for a new position. The advertised position was that of a Trackman Casual Driver on Gang No. 582 at Buckeye Yard, Columbus, Ohio. When the Award to Bulletin No. 18 was posted on April 25, 1991, that new position was not awarded to any applicant, but listed instead as "abolished."

The Organization alleges Agreement violation in that Rule 3, Section 3(e) requires that an advertisement may be canceled, but when, as here, it is not canceled within the negotiated seven (7) days, it must be awarded. The Carrier failed to award the position as required, and had the Carrier desired to abolish the position they could not do so as herein attempted. The Organization argues the Carrier attempted to "sharp shoot the Agreement" rather than award the position and give the proper five (5) day abolishment notice required under Rule 6.

The Carrier argues that Rule 3, Section 3(d) mandates an award be made within seven (7) days after the close of the advertisement. However, as the Carrier made the decision to abolish the position during that seven days, and in fact, did not award the position, there never was an incumbent, nor violation. The Carrier denies a violation of Rule 3, Section 3(e) in that it didn't cancel the advertisement for the position, but abolished it. The Carrier further maintains that Rule 6 is inapplicable as there never was an incumbent of the Trackman Casual Driver position. The Carrier maintains that since there was no position and no incumbent, there was no five (5) day notice required under Rule 6.

The Rules of the Agreement in dispute are Rules 3 and 6. Rule 3 (Selection of Positions), Section 3 (Advertisement and award) and Rule 6 (Reducing Forces) state in pertinent part:

"Rule 3, Section 3

(d) Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven (7) days after the close of the advertisement.

* * *

(e) An advertisement may be canceled within seven (7) days from the date advertisement is posted.

Rule 6

(a) Notice of... abolishment of positions shall be given not less than five (5) working days... in advance and bulletin shall be promptly posted identifying the positions to be abolished...."

After full study of the record and Award support presented by both parties, the Board finds the Carrier's actions are not violative of the Agreement for the following reasons. The Carrier was involved with a newly created position which it determined during the time line of Rule 3(d) to be unnecessary. The Board does not find the Organization's application of the Agreement to these facts on point. Nor on point are the Awards presented by the Organization (Public Law Board No. 3781, Awards 24 and 80, Third Division Award 29578). It is an unreasonable inference that the negotiators of this language determined that the Carrier should follow the course of assigning an unneeded position with the sole intent of immediately abolishing it. This Board finds that the language of the Agreement makes no applicable provision to the instant facts. It finds the outcome of creating a new position with immediate abolishment an absurd interpretation to Rule 3. Accordingly, the Board will lend its support to Public Law Board No. 3781, Award 13 which in somewhat similar circumstances between these same parties held that:

"... the Carrier's actions do not appear to have violated the Agreement. After deciding that the Backhoe position had been advertised in error, the Carrier could have dealt with the problem by cancelling the advertisement or, alternately, by abolishing the backhoe position advertised. The Carrier chose the abolishment alternative and thus Rule 3, Section 3 (b), (d), and (e) did not come into play. Further, since the job abolishment was effected before the position had been awarded to any Employee, the requirement of notice of job abolishment was not applicable."

The Board finds that under the disputed Rules, language and record, the Claim must be denied.

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 November 1995.