

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31265
Docket No. MW-30932
95-3-92-3-737

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 Agreement was violated when the Carrier failed to place the successful applicants onto the positions listed in Advertisement No. 101-91-1, dated February 11, 1991, as required by Rule 3 (System Docket MW-2104).
- (2) As a consequence of the aforesaid violation, all BMWWE employes who were awarded positions on Rail Laying Maintenance Gang No. 101, as listed in Award No. 101-91-1, dated February 25, 1991, shall each be allowed sixty (60) hours' pay, at their respective straight time rates, and they shall each receive six (6) days' credit for vacation and benefit purposes."

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.

The Board is confronted herein with an alleged Carrier violation of Rule 3. The Organization contends that the full facts of the Carrier's bulletin dated February 19, 1991, and its award of said positions on March 6, 1991, constitute a clear violation of Rule 3, Section 3(d). As the Organization views the language of Rule 3 and the instant facts, the Carrier was obligated to make the awards to Rail Laying Maintenance Gang No. 101 effective February 25, 1991.

The Carrier argues that it did not violate the Agreement and defends its actions by noting the following. The Carrier maintains that it is not practical to start up an inter-regional gang without appropriate lead time. Consequently, the instant bulletin carried the specific notation that "ALL POSITIONS TO BE AWARDED EFFECTIVE ON OR ABOUT WEDNESDAY, MARCH 6, 1991." The Carrier announced the start up of the rail gang in the bulletin and argued on property that considering the criteria of Rule 4, Section 3 it had acted properly. It further argued that it followed the thirty days (30) days required to advertise positions under Rule 3 as required.

Rule 3, Section 3(d) states that "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." The Rule further permits the Carrier additional time if employees are vacating positions without properly qualified replacements. That provision is not applicable when, as here, the awards are to furloughed employees.

The Board finds that the Carrier violated the Agreement. There is nothing in the language of Rule 3 that permits the Carrier to extend the effective date of the advertised position for any reason. We find no support for the Carrier's actions in either Rule 3(a) or in Rule 4, Section 3 that is applicable. In fact, this Board finds Public Law Board No. 3781, Award 24 to have resolved this issue. In that Award, the Board held that Rule 3, Section 3(d) meant that:

"... the job assignments resulting from awards will start not later than 'seven (7) days after close of the advertisement.'"

Applying that principle to these facts, the bids on this Bulletin closed on February 19, 1991. The Carrier was obligated by Agreement to begin the job assignments on Rail Laying Maintenance Gang No. 101 effective on the date awarded. The Claimants were awarded their positions on February 25, 1991.

During the proper record as developed on property the Carrier stated its objections to some of the listed Claimants. The Carrier argued that Messrs. O'Brien, Rager and Brooks were not recalled to the awarded positions in Gang 101 and that Mr. Bucharski did not respond to recall forfeiting his seniority. The Board finds no specific rebuttal and excludes these individuals from this sustaining Award. The Board notes that this is consistent with Third Division Award 29578, with Interpretation No. 1.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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