

improperly
recorded bulletin

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31373
Docket No. MW-32032
96-3-94-3-398

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 award the positions advertised in Bulletin No. 173, dated February 15, 1993, as required by Rule 3 and improperly canceled said bulletin (System Docket MW-2971).
- (2) As a consequence of the aforesaid violation the fifty-four (54) senior qualified BMW employees who bid on the positions advertised in said bulletin shall each be allowed forty (40) hours pay at the respective straight time rate of the fifty-four (54) advertised 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 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.

On February 15, 1993, Carrier posted Bulletin No. 173 advertising 54 positions for assignment. The Bulletin had a closing date of February 22, 1993. None of the positions were assigned within seven days of the closing date. Instead, on March 1, 1993, in Bulletin No. 176, Carrier advised that Bulletin No. 173 was canceled in its entirety. The Organization filed a claim contending that Carrier was not privileged to cancel a bulletin beyond seven days from the date it was posted. The claim sought 40 hours pay for the senior applicants for the jobs bulletined. Carrier denied the claim, inter alia, on the basis that it was speculative as to unnamed Claimants and that no assignments were made, thus the jobs did not exist. Before this Board, it argues that the claim is different from the one handled on the property.

Rule 3, Section 3, is the operative agreement provision involved in this dispute. Paragraph (d) of Rule 3, Section 3, states:

"(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."

Paragraph (e) requires:

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

Paragraphs (d) and (e) when read together allow Carrier to cancel an advertisement if the action is taken within seven days of the date the advertisement is posted. If an advertisement is not canceled, as provided in Paragraph (e), then, under the uncomplicated language of Paragraph (d), Carrier is obligated to make an award and post notice announcing the name(s) of the successful applicants, within seven days after the close of the bulletin. In this case Carrier did not cancel the bulletin within the time period allowed in the Rule. Further, it did not make the award and post the results within the time period required by Paragraph (d). These failures violated the Agreement.

The claim has merit. It will be sustained. Carrier has argued that the Claimants are not identifiable, therefore the claim is defective. With this the Board does not agree. The bulletin had a closing date. Bids were received for the positions listed in the bulletin. The claim was made on behalf of those who would have been the successful applicants. They are easily identifiable.

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AWARD

Claim sustained.

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 29th day of February 1996.