

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32177
Docket No. CL-32099
97-3-94-3-498**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11091) that:

- (1) Carrier violated the effective Agreement Rule 8, among others, when it failed to recall Clerk D. Mote to service on a Guaranteed Extra Board position at Mattoon, Illinois, which was bulletined under date of April 24, 1992, and for which no applications were received;**
- (2) Carrier shall now compensate Claimant Mote one day's pay at the appropriate rate for May 8, 1992, and for each and every day thereafter until the violation is corrected."**

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 were given due notice of hearing thereon.

On April 24, 1992, the Carrier issued Bulletin No. 67 advertising a position of **Guaranteed Extra Operator/TCS Clerk with headquarters at Mattoon, Illinois.** Receiving no applications for the position during the ten day period of the Bulletin, the Carrier on May 8, 1992 issued a Bulletin canceling Bulletin No. 67 in its entirety account no bids received.

Also on May 8, 1992 the Carrier issued Bulletin No. 76, again advertising a position of **Guaranteed Extra Operator/TCS Clerk headquartered at Mattoon, Illinois.** On May 18, 1992, the Carrier issued a Bulletin awarding the position to J. L. Dhom.

The Organization filed claim on May 12, 1992 on behalf of D. Mote, an extra employee at Centralia, Illinois, (the nearest location to the vacant position) asserting that Claimant stood to be assigned under Rule 8(e) reading in pertinent part:

- “(e) When a bulletined new position or vacancy is not bid in or assigned to an employee in service, the company shall fill the vacant position by recalling in seniority order the qualified furloughed employee at the location involved. Failing to fill the vacancy in this manner, the company may exercise the following options to fill the vacancy:**
- a) Assign the junior qualified extra employee in reverse seniority order at the location involved. For this purpose, all employees will be considered as extra employees at the location who have designated the location under the provisions of Rule 9 (d) (1) or Rule 15(g), in addition to those headquartered at this location.**
 - b) Hire a new employee.**
 - c) Assign the senior qualified furloughed employee(s) in seniority order at the nearest location in the seniority district to the location where the vacancy exists.**
 - d) Assign the junior qualified extra employee(s) in reverse seniority order at the nearest location in the seniority district.”**

The Carrier responded to the claim pointing out that under paragraph (e) when no bids are received, the vacant position is to be filled by recalling qualified furloughed employees at the location, and there were none. Further, the Claimant was not furloughed, nor was she headquarters at Mattoon, Illinois.

The Carrier then asserts that the balance of Rule 8(e) paragraphs (a), (b), (c) and (d) are optional, and it chose not to use those options to fill the position.

The Organization argues that in instances where no bids are received, the Carrier has the option of deciding under which provision it will fill the position, i.e., (a), (b), (c) or (d), but that it does not have the option of setting aside those provisions and rebulletining the position.

The Carrier argues that its procedure in rebulletining the position where no bids were received on the original Bulletin is no different from past applications. This argument appears to be supported by the following statement made in its letter of July 20, 1992 to the Organization reading:

"The position was rebulletined on May 8, 1992, and, as often happened in the past, when a vacancy is rebulletined due to no qualified bidders, the 'rebulletined' vacancy is bid on and awarded."

This is so because a search of the record before the Board does not reveal that the Organization took issue with the Carrier's statement..

The Board concludes that the provisions of Rule 8(e) reading:

"Failing to fill the vacancy in this manner, the company may exercise the following options to fill the vacancy." (Emphasis added)

does not mandate the Carrier to use one of the options set forth in paragraphs (a), (b), (c) and (d) to fill a position left vacant because it could not be filled under 8(e). The word may is not mandatory. Past practice as discussed above, supports this conclusion.

The Board is bound by the terms of the Agreement and is duty bound to find and give effect to the intent of the negotiators of the Agreement. To this end we find that

past practice (as discussed above) reveals the intent of the Agreement. The Carrier may exercise one of the Agreement options, or it may chose to rebulletin.

The Agreement was not violated by the Carrier's election to rebulletin the position rather than exercise other options available to it.

AWARD

Claim denied.

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 13th day of August 1997.