

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32189
Docket No. MW-31929
97-3-94-3-259**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Chicago Central & Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it posted Bulletin Nos. 1, 2, 3, 4 and 5, dated February 11, 1993, listing improper requirements and assigning two (2) headquarter points with two (2) different starting times for the positions advertised (Carrier’s File BMW 93-012).**
- (2) The Carrier violated the Agreement when it posted Bulletin No. 8, dated March 11, 1993, listing improper requirements and assigning two (2) headquarter points with two (2) different starting times for the position advertised (Carrier’s File BMW 93-014).**
- (3) As a consequence of the violations referred to in Parts (1) and (2) above, the Carrier shall cancel the bulletins in question, rebulletin said positions without requiring applicants to be qualified before being assigned to the advertised positions and the positions shall be assigned only one (1) headquarters point with the same starting time assigned for each workday.”**

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.

Each part of the claim before this Board must be considered only within the on property record. With that clearly understood, Part (1) of the claim before us was complex and separated by the parties on the property. Bulletins 1 through 4 considered the issue of improper requirements and was pursued as this instant claim. Bulletin No. 5 by the correspondence on property was a separate and district claim also pursued separately to this Board for resolution. That said, Bulletin No. 5 and the issues of different headquarter points and starting times is a duplicate claim. This Board has never permitted the parties to progress the same issue under two claims. This is inappropriate and inconsistent with the Railway Labor Act. All issues in Part 1 of the claim relating to Bulletin No. 5 are dismissed from consideration.

The substance of Part (1) of this claim relating to Bulletin Nos. 1 through 4 is that by practice and Rule the Carrier is alleged to have violated the Agreement by addendum requirements to the Bulletins. The Organization argues that these Bulletins posted on February 11, 1993 required Claimants to be qualified on the Maintenance of Way Book of Rules and the operation of the bridge. The Organization argues that Rule 16 was violated. Rule 16(b) in particular states:

"An employee who acquires a position through bidding... will be allowed not less than five (5) nor more than thirty (30) working days in which to qualify..."

The Organization argues that a full reading of Rule 16 permits seniority to govern, assuming sufficient fitness and ability. This does not mean that an employee must know the operation of the bridge as a qualification for bidding. The senior employee assumes the position and is subsequently allowed at least five working days under Rule 16 supra, to qualify. The Organization argues that to qualify beforehand as the Bulletin addendum requires, violates the Agreement and practice.

The Board has judiciously considered the numerous arguments and Carrier denials of record. We find no practice to support the Organization's arguments. In fact, the Carrier provided a signed statement which proved that prior to bidding, applicants on their own time have learned basic bridge operation to meet minimum levels of fitness and ability. Nor is there any evidence of record that employees have lacked equal ability to qualify.

The Board finds no merit to this claim. We reviewed prior Bulletins and find no persuasive proof of practice indicating that prior Bulletins permitted employees to be promoted who possessed no knowledge of bridge operation. Rule 16 does not state that the Carrier must promote employees without any knowledge of bridge operation and thereafter, provide at least five days in which to demonstrate proficiency in the operation, rules, regulations and reporting procedures of the position. The Agreement contains no language suggesting full cooperation of Supervisors or in the classification of positions that the Carrier must promote an employee who lacks basic fitness and ability solely on the basis of seniority and thereafter train those who lack minimum fitness and ability.

The Board denies Part (1), Bulletins 1 through 4 of the claim for lack of proof the Carrier violated the Agreement and in particular, Rule 16. Part (2) of the claim is *improperly before this Board*. The December 2, 1993 letter of conference specifically includes a statement that the Organization "withdrew without precedent or prejudice... claim... BMWE 93-014." Although Bulletin No. 8 was argued on the property, in Submission and before this Board, there is no record on the property to refute the claim conference letter. Part (2) of the claim is dismissed. Based on the above, Part (3) of the claim is denied.

AWARD

Claims denied or dismissed.

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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 13th day of August 1997.