

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33342
Docket No. MW-32269
99-3-95-3-89**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to assign Mr. C. Wicks to the track foreman’s position advertised on Bulletin No. 32, dated November 11, 1993, for which he submitted a bid and instead force assigned the position to Mr. J. Pfeiffer who did not submit a bid for said position (System File 1994-4/013-293-15).

(2) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to comply with the provisions of Rule 13, i.e. assign the senior qualified bidder (Mr. C. Wicks) and compensate him for all lost wages resulting from its improper actions beginning November 24, 1993 and continuing until the position was abolished on December 10, 1993.”

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.

Claimant, holding seniority as a foreman within the Carrier's Track Subdepartment, bid on a track foreman's position bulletined in Bulletin No. 32 dated November 11, 1993. Moreover, Claimant was qualified for the position in question and was the most senior qualified employee to bid on the position. However, the Carrier assigned the position to another employee who, although more senior and qualified, did not bid on the position.

The Organization contends that the Carrier violated Rule 13, which provides in relevant part, that vacancies will be placed on bulletin "...in an effort to have the successful bidder available when the position starts...." (Emphasis supplied). Thus, according to the Organization, the Carrier violated the rule when it assigned the position to another employee who was not the "successful bidder." The Carrier on the other hand asserts that its action was justified by Rule 8.

Fortunately, the interplay of these two Rules has already been determined in Awards involving these same two parties. In Third Division Awards 32398 and 33209 the Board held that neither Rule 8 nor any other governing agreement between the parties permits the Carrier to force assign employees. Thus, it was held that Rule 13 governs and because it applies only to employees who bid, assigning a bulletined position to an employee who does not bid is improper.

Because the instant matter involves the same type of dispute, the same applicable provisions of the parties' agreement, and the same parties, we follow the findings in Awards 32398 and 33209.

AWARD

Claim sustained.

Form 1
Page 3

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Docket No. MW-32269
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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 23rd day of June 1999.