

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38374
Docket No. CL-38562
08-3-NRAB-00003-040584
(04-3-584)

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13069) that:

- (a) Claim is hereby presented to the Carrier in behalf of Claimant, S. Scheelar account the Carrier violated the Clerks’ Rules Agreement effective July 1, 1999, particularly Rules 4, 5, 9 and other rules when it failed to award position of Material Foreman, Symbol No. 0189-151, rate of pay, \$157.57 per day, located at the Storehouse in Frontier Yard Car Shop Facility, Buffalo, NY as advertised and awarded on Bulletin #48-B and 48-A dated February 25, 2004 to Claimant S. Scheelar and instead awarded same to junior employee M. Prus, effective February 26, 2004. Claimant notified the Carrier on the AM of February 24, 2004 of the medical restriction being removed by her personal physician. The Carrier acknowledges receipt of this document.
- (b) Claimant S. Scheelar now be allowed 8 hours penalty pay at the appropriate pro-rata rate of \$157.57 per day commencing February 26, 2004 and to continue for each and every work day thereafter on account of this violation.
- (c) This claim has been presented in accordance with Rule 45 and should be allowed.”

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.

In progressing the claim, the Organization contends that the Carrier failed to expedite a determination of the Claimant's medical qualifications as the senior bidder for a bulletined position of Material Foreman at the Frontier Yard Car Shop in Buffalo, New York, and thus deprived the Claimant of being awarded such position in violation of Rules 4, 5 and 9, and other unspecified Rules of the Agreement.

The bulletin advertising the Material Foreman position at issue was posted for bid on Wednesday, February 18, 2004. Among other things, the bulletin announced that bids may be submitted through PACS to the close of the bid cycle, 4:00 P.M., Tuesday, February 24, 2004. The bulletin also noted that the duties of the position included the lifting or movement of heavy materials in excess of 50 pounds.

At the time the bulletin for the Material Foreman position issued, the Claimant, who was the incumbent of a Clerk/Jittney Driver position, was not medically qualified to work the Material Foreman position due to a prior off-duty back injury that gave cause to impose lifting restrictions on her work functions. Notwithstanding this restriction, the Claimant placed a bid for the position at 6:38 A.M. on Friday, February 20, 2004.

On Tuesday, February 24, 2004, the Claimant presented to local supervision a medical note from her personal physician. Dated February 23, 2004, this note contained a one sentence statement that reads: "OK to return to work with no restrictions." The note was faxed to the Medical Department in Jacksonville, Florida, for its review and physical work determination at 7:30 A.M. that same date, February 24, 2004.

Contrary to the Organization's contentions, the statement provided by the Claimant's personal physician may not be viewed as having given the Carrier what the Organization offers as constituting "all the necessary medical information from Claimant's personal physician leading to lifting of the temporary restriction." Nor do we find this note, as the Organization also urges, to be "clear, precise and sufficient for a prompt clearance by Carrier."

It was necessary and appropriate that the Medical Department make a determination as to the Claimant's physical fitness. It did so, advising local Carrier officials by fax at about 11:15 A.M. on Wednesday, February 25, 2004, that Claimant "has been qualified to work with no restrictions." This lifting of the medical restriction came one day after the closing date for receipt of bids for the position of Material Foreman from qualified bidders.

While the Organization contends the Carrier violated Rules 4, 5 and 9 of the Agreement, the Board finds no basis to conclude that there was a failure of the Carrier to have fully complied with such Rules.

Rule 4 states that rights to advertised positions or vacancies shall be based on seniority, fitness and ability. As stated above, on both the date the Claimant submitted a bid and bidding closed, medical restrictions precluded the Claimant from performing the advertised duties of a Material Foreman position. Thus, although the Claimant was the senior bidder, she did not then possess the requisite fitness and ability for the position.

Rule 5 provides positions be bulletined on the Wednesday following the date they occur for a period of seven calendar days. This Rule further specifies that bulletined positions will be awarded to the senior "qualified" bidder not later than seven days following the close of the advertising period. Again, it is evident that the Carrier fully complied with such requirements, awarding the position to the senior qualified bidder, Clerk M. Prus.

Rule 9 covers the time period in which an employee awarded a bulletined position will be allowed to qualify for the bulletined position. This Rule does not appear to have any application to the dispute at issue as concerns the Claimant because she was not the employee awarded the position.

There is no question that reason exists to believe that actions of both the Claimant and the Carrier might have been handled or progressed in a different manner, i.e., the Claimant having provided for review of the medical restriction by her personal physician and the Medical Department in anticipation of the posting of a job bulletin, and/or local supervisory officials engaging in telephonic communication with its Medical Department to determine whether a decision on the Claimant's medical restriction could be made before the bidding cycle closed. However, the fact remains that an unusually good effort was made to expedite consideration of the note from the Claimant's personal physician, and a failure to have a more timely decision made does not carry with it a right for the Claimant or the Organization to claim otherwise. Moreover, for reasons as stated above, it is evident as concerns the bulletining and awarding of the Material Foreman position that the Carrier did not violate cited Agreement Rules in this particular instance by not awarding that position to the Claimant. Accordingly, the claim will be denied.

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 20th day of November 2007.