

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40615
Docket No. SG-38607
10-3-NRAB-00003-040623
(04-3-623)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of D. T. Ingersoll, for compensation at the time and one-half rate until such advertisement is awarded, account Carrier violated the current Signalmen’s Agreement, particularly Rule 12, when on May 8, 2003, a position on Gang K012 became vacant and was not advertised or awarded within 14 days as required by the rule. Carrier’s File No. NEC-BRS(S)-SD-1020. General Chairman’s File No. JY32101057-180310. BRS File Case No. 13016-NRPC(S).”

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.

The claim at bar is an alleged Carrier violation of Rule 12 – Bulletin and Assignment. The Rule is clear that, “. . . permanent vacancies will be advertised in the appropriate seniority district within 14 days from the date they occur.” On May 8, 2003, J. Steffen was promoted, leaving a vacancy of Assistant Foreman, CETC Trouble Desk position on Gang K-012. There is no dispute in this record that this is not an alleged violation; it is an actual violation. The Carrier noted in response that, “. . . the position was not advertised following the promotion of Mr. Steffen.”

The dates at bar indicate that the position should have been advertised following the vacancy on May 8, and certainly within 14 days by May 22, 2003. The Board notes that no claim was filed and no discussion is demonstrated to have occurred over the failure to advertise. Further, the claim made by the Organization was filed by letter dated May 30, and without rebuttal, received by the Division Engineer’s office on June 18, 2003.

The Carrier asserts on the property that at the time of the vacancy there were serious budgetary constraints and a careful consideration of all staffing needs and a reallocation of resources was underway. The Carrier notes that the position in dispute was ultimately abolished effective June 3, 2003. The Carrier further asserts, without rebuttal, that the Claimant was “in no way . . . negatively affected monetarily; on the contrary our financial records indicate that the opportunities afforded to you in your current position bypass the financial rewards of the Assistant Forman position.”

In this instance, the Carrier violated Rule 12 of the Agreement. The Organization’s claim reached the Carrier more than two weeks after the position was abolished. The Organization’s claim was dated May 30, 2003. It was well after the 14 days required to advertise the position; and had it been timely raised, the abolishment notice might have been immediate, limiting or negating liability. Even further, a reading of Rule 12 indicates that had it been followed, the position could have been advertised on May 22; closed on May 29; awarded on June 7, with an effective date of June 17, 2003. In other words, with proper advertisement of the Trouble Desk vacancy, it would still have been abolished before this position was actuated.

The Board finds that the Carrier violated Rule 12 of the Agreement, but no advertisement is now required. Based on the record it is a technical violation with no evidence that the Claimant was financially or adversely harmed in any manner. Accordingly, the Claimant is not entitled to compensation under these unique circumstances.

AWARD

Claim sustained in accordance with the Findings.

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 27th day of August 2010.