

**Award No. 10832**

**Docket No. SG-10421**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Eugene Russell, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad Company:

(a) That the Carrier violated the Signalmen's Agreement when it assigned Mr. Robert Ott to the Maintainer's position advertised in Bulletin S-716-56, instead of Boyd F. Anderson.

(b) That Mr. Anderson be assigned to the position of Signal Maintainer at Mt. Vernon, Ohio.

(c) That Assistant Signal Maintainer B. F. Anderson be paid overtime for his actual driving time to and from work, plus 6 cents per mile for his driving expenses, as long as he is held off the job at Mr. Vernon, Ohio.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of August 20, 1956, the Carrier issued Bulletin No. S-715-56 advertising for bids, among other positions, a position of Signal Maintainer with headquarters at Mt. Vernon, Ohio. The bulletin specifically set forth a procedure to follow in making application for the position and a time limit in which applications would be received as follows:

"Applications will be received by the undersigned up to 12 o'clock Noon, August 30, 1956, \* \* \*, which are hereby advertised under the provisions of Rule 46 of the Signalmen's Agreement."

Bulletin No. S-715-56 was shown as approved by Division Engineer W. G. Stagge and signed by Signal Supervisor R. M. Beach.

In accordance with the provisions set forth in Rule 46 of the Signalmen's Agreement, referred to in the bulletin, all applications for the position had to be made in writing on the forms provided by the Carrier for that purpose, bearing the personal signature of the applicant, and had to be prepared in duplicate, with one copy forwarded to Signal Supervisor R. M. Beach and one copy to the Local Chairman. Except for those employees absent on leave, annual

question as to when Local Chairman Glanis Snyder had actually received a copy of the application filed by Mr. Morrison was considered to be of such little importance that it was not even developed by the Committee. The sole basis of their argument, as set forth in the "Supplemental Statement" filed by the BRSA in Docket SG-7060, was that:

"\* \* \* the Carrier must assume the responsibility for the late receipt of an application in the Signal Supervisor's office from Mr. Morrison. \* \* \*"

In the award itself, the only reference is to the receipt of Morrison's application in the office of the Signal Supervisor.

It follows, therefore, that the Signalmen's Committee has considered the sole controlling factor in the handling of applications from a time standpoint to be receipt by the Carrier's officer, i.e., the Signal Supervisor or some other supervising officer, and not receipt by the Local Chairman.

#### **CARRIER'S SUMMARY:**

The factual record in this case shows that Robert Ott's application was received by the Signal Supervisor before the closing time for receiving bids. It must, therefore, be concluded that it was a perfectly valid application. Being the senior applicant, Mr. Ott's assignment to the position in lieu of the assignment of Boyd Anderson, a junior man, was proper. The Carrier acted properly when it declined the claim coming from Mr. Anderson.

The Carrier submits that this claim should be declined on the following basis:

- (a) Part (a) of the claim should be declined in the absence of any showing of any violation of the Signalmen's Agreement;
- (b) Part (b) of the claim should be declined on a showing that Mr. Ott's application was proper and valid and that, therefore, Mr. Ott, and not Mr. Anderson, should have been assigned to the position of Signal Maintainer at Mt. Vernon, Ohio;
- (c) Part (c) of the claim should be denied on a showing that the Carrier's action here was consistent with the rules appearing in the Signalmen's Agreement and that there is no support in the working rules whatever for the claim as made.

The Carrier submits that the claim in its entirety is without merit; the Carrier respectfully requests that this claim be declined in all its parts.

**OPINION OF BOARD:** The record in this case discloses that under date of August 20, 1956, "B" Bulletin S-715-56 was issued advertising that applications would be received up to 12 noon August 30, 1956 for the position of Signal Maintainer, Headquarters, Mt. Vernon, Ohio.

Applications were received from the following:

Robert Ott, Signalman, Gang No. 1, East Columbus, Ohio, Seniority Date 11-3-43.

Boyd Anderson, Signal Helper, Heath, Ohio, Seniority Date 9-8-44.

Donsel L. Post, Signal Helper, Newark, Ohio, Seniority Date 5-7-56.

Robert Ott was awarded position of Signal Maintainer, Headquarters, Mt. Vernon, Ohio on Bulletin S-716-56 dated September 5, 1956.

It is the position of the Committee that at the closing time for receiving bids to Bulletin S-715-56 advertising for a Maintainer at Mt. Vernon, Ohio the senior applicant whose application was in the hands of both the designated officer of the company and the Local Chairman was Boyd F. Anderson and that Robert Ott's bid was not received by the Local Chairman until after the closing time for receiving applications, and that therefore it should not have been considered.

It is the position of the Carrier that the Signal Maintainer's position as advertised in Bulletin S-715-56 was properly assigned to Mr. Robert Ott in accordance with the Signalmans Agreement effective October 1, 1951.

We do not find any award by this Board between the parties under this Agreement having an analogous relationship to the facts and circumstances presented in this record.

In Award 7110 between the same parties the Board held that the Carrier violated the Agreement when it accepted an application after the closing time specified in the Bulletin and awarded the job to the applicant even though his application was not received by the Carrier within the time specified. In Award 7110 the question of timely receipt of a copy by the Local Chairman was not involved.

In Award Number 10172 between the same parties involving the same Rule 46(d) the claim was advanced on the premise that the withdrawal notice was not effective because of the Carrier's failure to furnish a copy thereof to the Local Chairman, however, in this Opinion the Board stated as follows:

"We are of the opinion that the rule does not require such notice be furnished the Local Chairman. We cannot speculate what the parties intended when the rule was negotiated. It is definite that at the time of negotiation the parties intended that such applications for positions be prepared in duplicate with one copy being furnished the designated officer of the Company, and the other copy to the Local Chairman.

"The only mention made in Rule 46(d) as to withdrawals, is in the last sentence of the above rule.

"The Board does not have the authority to speculate as to what the parties intended when the rule was written. The parties could have readily made it clear that copies of all applications and withdrawals were required to be furnished the Local Chairman.

"The rule as written has no such requirement, and we find the claim as filed is without merit and should be denied."

The applicable provision of Rule 46 now before the Board provides:

"(d) All applications for bulletined positions shall be in writing on the forms provided by the Management for that purpose, bearing the personal signature of the applicant. They shall be prepared in duplicate and one copy forwarded to the designated officer of the

Company and the other copy to the Local Chairman. Except as provided in Rule 38(e), applications received after the closing time for receiving bids will not be considered. Withdrawal of applications must also be received before the closing time for receiving bids."

The exception provided in Rule 38(e) relates to Employees absent on leave and has no bearing on the issue in this case. From a careful study of this record, the provisions of the Agreement, and previous awards your Board cannot find that the contract was violated.

Our construction of the rule as written does not specify that a copy of the application be received by the Local Chairman within the time specified in the Bulletin and this Board does not have the authority to insert such a provision therein. The parties could have readily made it clear that applications received by the designated Officer of the Company, and the local Chairman after the closing time for receiving bids would not be considered, however, the rule as written has no such requirement and we necessarily find the claim as filed to be without merit and it should be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement as alleged.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.

#### LABOR MEMBER'S DISSENT TO AWARD NO. 10832 — DOCKET SG-10421

Award 10832 commits a serious error and has the effect of rewriting the agreement.

The applicable provisions of Rule 46(d) read:

" . . . They [applications] shall be prepared in duplicate and one copy forwarded to the designated officer of the Company and the other to the Local Chairman. . . . Applications received after the closing time for receiving bids will not be considered. . . ."

The first sentence of the above quoted portion of Rule 46 (d) quite obviously places "the designated officer of the Company" and the Local Chairman on the same plane in the matter of those designated to receive application. That portion of the rule dealing with timely receipt of application does nothing to disturb the equality of rank between the designees. If, then, as the Award finds, ". . . the rule as written does not specify that a copy of the application be received by the Local Chairman within the time specified in the Bulletin and this Board does not have the authority to insert such a provision therein. . . ." neither does it so specify with regard to "the designated officer of the Company."

Such finding is clearly contrary to the rule and Award 7110, and has the effect of writing the timely receipt provisions out of the agreement.

With reference to the statement that "We do not find any award by this Board between the parties under this Agreement having an analogous relationship to the facts and circumstances presented in this record.": while not involving the same parties, the findings of Award 4848, Referee Carter, are squarely in point:

"The applicable portion of Article 27(b) clearly means that an applicant for an advertised position must file his application within the time fixed by the notice. **A failure to comply with either provision nullifies the application and leaves the applicant in the same position as if he had filed no application at all. Awards 902, 903, 1136, 1205.** We reaffirm the principle announced in those awards. Owens having failed to comply with the conditions precedent contained in Article 27(b), his bid could not be considered by the Carrier. Consequently, Owens could gain no rights by virtue of his ineffective bid. An affirmative award is in order for the wage loss suffered." (Emphasis Ours)

Award 10172, quoted in Award 10832 is not in point, and directs itself to an entirely different question. Award 10172, as pointed out in the dissent attached thereto, misstated the issue before the Board and is, therefore, of no value.

Award 10832 is in error, therefore, I dissent.

/s/ **W. W. Altus**  
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