



Award Number 17953

Docket Number TE-18036

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Elgin, Joliet & Eastern Railway, that:

1. Carrier violated the Agreement when it failed to place C. M. Cowger on the position of first shift Chicago Heights Tower within thirty (30) days from bulletin dated January 31, 1967.
2. Carrier shall compensate C. M. Cowger the difference between pro rata rate already paid and time and one-half rate for March 3, 6, 7, 8, 9, 10, 1967, as well as Mr. Cowger's expenses of \$19.60 for the above dates.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute arose over the proper interpretation of Rule 14 paragraph (b) and in particular whether the Carrier must place the successful applicant for a position on the position within thirty (30) days from the bulletin to all employees concerning the vacancy or whether the Carrier has thirty (30) days from the date it notifies the employee of his assignment as the successful bidder.

(b) ISSUES

- (1) Did the Carrier violate Rule 14 (b) when it failed to place claimant C. M. Cowger on the position of first shift Chicago Heights Tower within thirty days from the bulletin dated January 31, 1967.
- (2) Damages for the breach.

(c) FACTS

A permanent vacancy on the first trick Chicago Heights occurred and by bulletin dated January 31, 1967 the Carrier announced the vacancy and stated it would receive bids to and including February 11, 1967. Claimant C. M. Cowger, who formerly held the agency at Matteson, Illinois, was the successful bidder and the Carrier assigned him to the first shift position at Chicago Heights on February 13, 1967. However, despite the bulletin of January 13th the Carrier did not permit claimant Cowger to be placed on

penses" provisions of Article 9 have no application to this claim.

The pertinent correspondence concerning the instant claim is attached as Carrier's Exhibit "D" consisting of fourteen pages.

RULES AT ISSUE:

First paragraph of Paragraph (b) of Article 14

"(b) When permanent vacancies occur or new positions are created, they shall be bulletined to all employees coming within the scope within five (5) days. Applications must be filed with the officer signing the bulletin within ten (10) days from date of bulletin and assignments shall be made within five (5) days thereafter. Successful applicant shall be placed on the position within thirty (30) days from date of bulletin or thereafter compensated in accordance with Article 9 of this Agreement."

"Article 9

Regular Assigned Employees Used on Relief or Emergency Work

Regular assigned employees who are taken off their assignments to perform relief or emergency work on other assignments coming under this agreement will be compensated at the rate of time and one-half on the basis of the assignment filled, and if so used on assignments away from their home station they shall also be allowed actual necessary expenses while away from their home station."

(Exhibits Not Reproduced)

OPINION OF BOARD: The dispute herein arose over the proper application of that part of Article 14 (b) reading:

"(b) When permanent vacancies occur or new positions are created, they shall be bulletined to all employees coming within the scope within five (5) days. Applications must be filed with the officer signing the bulletin within ten (10) days from date of bulletin and assignments shall be made with five (5) days thereafter. Successful applicant shall be placed on the position within thirty (30) days from date of bulletin or thereafter compensated in accordance with article 9 of this Agreement."

The Petitioner contends that the successful applicant for a position must be placed upon the position within thirty days from the date of the bulletin advertising the position or thereafter be compensated in accordance with Article 9. The Carrier contends that the thirty days runs from the date of assignment.

It is well settled that this Board must apply agreements as written and that we cannot change an agreement through the guise of an interpretation. The first sentence of Article 14 (b) refers to the bulletin advertising the position. It is obvious that "bulletin" referred to in the second sentence of the rule has reference to the same bulletin as the first sentence, and it is clear to the Board that the "bulletin" referred to in the third sentence of the rule is the bulletin advertising the position, as referred to in the first sentence. The rule makes no reference to an "award" bulletin as referred to by the Carrier and we cannot insert such provision into the rule. The Claimant was not

placed on the position awarded him within the thirty days from the date of the bulletin as required by the rule. The claim will be sustained.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1970.