

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19979
Docket Number CL-19986

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7174)
that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly Rules 2-A-1, 2-A-2, 9-A-1, 9-A-2, among others, when it failed to post certain bulletins in places accessible to all employees and deprived Clerk Swift from being awarded position No. 1, of Bulletin No. 4 which was awarded to a junior clerk (E. G. Rath) effective June 2, 1971, as her office never received the bulletin.

2. That Clerk Swift be awarded and assigned the position held by Junior Clerk Rath effective June 2, 1971 and be paid the monetary difference between her position and the position awarded Clerk Rath, including all overtime and for each additional day thereafter she is withheld from this position until the violations are corrected and Clerk Swift is properly assigned to the position she should have been awarded had the bulletin been accessible.

3. The Carrier further violated the specific provisions of Rule 4-D-1 of the Clerks' Agreement and Article V, Section 1 (a) of the National Agreement, dated August 21, 1954, when it failed to render proper reasons for disallowance and did not claim they were not in violation of the provisions of the Clerks' Agreement within the sixty (60) days' time limit period of claim.

OPINION OF BOARD: A certain position was awarded to an employee less senior than Claimant when Carrier allegedly failed to distribute properly the bid sheet advertising the position. Claimant advises that she first became aware that the position had been filled five days after bids were closed. One week later, she complained to the Carrier.

Rule 2-A-1(a) states:

"All new positions or vacancies known to be of more than thirty (30) days' duration will be bulletined on the first and third Wednesday for Group 1 positions, and on the second and fourth Wednesday for Group 2 positions, or on the succeeding working day when any of such Wednesdays is a holiday, following the date they occur for a period of five (5) days, and copies of the bulletin will be posted in

"places accessible to all employees of the seniority district affected. Bulletin will show position, location, primary duties, tour of duty, days of rest, rate of pay, symbol number where such number has been assigned to the position, and whether the position or vacancy is of a permanent or temporary nature. A position which it is anticipated will be of six (6) months or more duration, will be bulletined as a permanent position. Copies of bulletins and notices of award will be furnished the General Chairman and the Local Chairman.

Bulletins advertising seasonal positions in addition to stating that the position is of a permanent or temporary nature will also state it is a seasonal position.

Temporary positions or vacancies which become permanent, through any cause, shall be rebullitened."

The parties dispute the propriety of considering certain correspondence submitted to the Carrier approximately three months after the final procedural step on the property. The Board finds that the information contained in the correspondence is not crucial to this Award and accordingly, it is unnecessary to rule on Carrier's objection.

Certainly, as Carrier urges an Organization has a burden of proving its claim. See the Award of this Referee in 19833, citing Awards 10067 (Weston), 14682 (Dorsey), 15536 (McGovern); and it must prove every element necessary for sustaining an Award. Award 15670 (Kenan). We have reviewed the record in that light.

The Agreement requires the Carrier to post bulletins in places accessible to all employees affected. During all phases of the handling of the matter on the property, Claimant insisted that there was no posting and that she was not aware of the bid sheet advertising the position until after the job had been filled.

In reply to the claim, the Carrier stated that the bulletin had been sent to a certain clerk on a certain day, which procedure coincided with "standard practice" and that the bulletin should have been received by the Claimant in sufficient time to bid. Further, the Carrier states that this was the "first complaint" of record concerning its distribution procedures, and that the Carrier's responsibility ends when the bulletins are released for posting.

Under the procedures of this Board, we feel that the Claimant clearly framed an issue when she advised the Carrier that the bulletin had not been posted or distributed in accordance with the terms of the Agreement. That assertion established a prima facie case. While the burden of proof does not switch, once a prima facie case is established, the burden of moving forward with contradictory evidence falls upon Carrier. Here, Carrier did not suggest that the bulletin had, in fact, been properly distributed or that

Claimant was negligent in some fashion. Instead, Carrier was content to defend its position on the grounds that its procedures should have assured notification to the Claimant, and that its procedures were reasonable. Under these circumstances, and in light of the language of the Agreement the Board is of the view that the Claimant did satisfy the burden.

The Carrier suggests that the record contains an improper reference to the number of a bulletin and the identity of the successful bidder. It is noted, however, that that matter was not raised on the property and accordingly, it is inappropriate for consideration by the Board.

Claimant failed to object until June 14, 1971, and the record shows that she was subsequently awarded the position, on a permanent basis, effective September 29, 1971. Accordingly, Claimant is awarded the monetary difference between her position and the position awarded to a less senior employee on June 2, 1971, but only for the period from June 15, 1971 through and including September 28, 1971. Because of the disposition of this dispute, it is unnecessary to consider Claim No. 3.

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 No. 1 is sustained to the extent stated in the Opinion.

Claim No. 2 is sustained to the extent stated in the Opinion.

Claim No. 3 is denied for reasons stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.