

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22131
Docket Number MW-22195

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Bangor and Aroostook Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to accept the bid of Clair O. Wilmot for the advertised position of painter (Bulletin No. 347, dated February 17, 1976) and

(2) the Carrier further violated the Agreement when it deprived and/or took from Clair O. Wilmot his seniority as a painter and all rights inherent thereto.

(3) As a consequence of (1) and (2) above, the Carrier shall restore Claimant Wilmot's seniority and rights as a painter (cumulative) and shall reimburse Claimant Wilmot for all wage loss suffered as a consequence of the aforesaid violations."

OPINION OF BOARD: On "either February 18 or 19, 1976" a February 17, 1976 Bulletin was posted, which requested bids for one painter.

On February 27, 1976 Claimant submitted a bid for the position, by U.S. mail, which was received on March 1, 1976.

Carrier refused to honor the bid, but instead awarded the position to a junior applicant. Moreover, Carrier removed Claimant's painter seniority and his protected status.

Section 6(a) of Article III specifies the conditions of job posting and the Organization asserts that Carrier violated the mandates of that Section.

Carrier notes that February 27 was the last day for accepting bids and Claimant's bid, which was mailed that day was not received until March 1. Further, Carrier asserts that Claimant delayed - at his own peril - because he was on notice that his position was to be

abolished on February 20. The bulletin specifically stated that bids were to be recieved in a designated office "...up to and including close of work....February 27..."

Claimant seeks reinstatement to the seniority roster of painters in the Bridge and Building Department, reinstatement of his "protected" status and reimbursement for all lost wages.

The Claimant's qualifications do not appear to be in issue in this dispute. But, both parties have submitted sound and convincing arguments to us concerning the matters which are in dispute, even though they deal with divergent portions of the total claim.

We have considered, at length, our function as an appellate body without a disposition to dispense equity. At the same time, we are convinced that in this case - and without establishing any precedent hereby - the only possible solution is a reinstatement of the Claimant to the painters' seniority group with seniority and protection rights unimpaired so as to permit - and require - him to use such seniority rights on subsequent painter assignments which become available. Further, Claimant shall not be considered as having been placed in a worse position with respect to compensation during the period of time until he can again hold a painter's position. All monetary portions of this claim are 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 Agreement was not violated.

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Claim disposed of in accordance with the Opinion of the
Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.