

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22593
Docket Number MW-22507

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company

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

(1) The Agreement was violated when the assignment to the position advertised in Bulletin No. 723 was not made in conformance with Agreement Rule 8 (System File 800-46-B-147).

(2) As a consequence of the aforesaid violation, Mr. David B. Lorendo shall be

(a) allowed the difference between the Assistant Section Foreman's rate of pay and the Section Laborer's rate of pay from 2-22-77 through 4-6-77

and

(b) allowed mileage for 896 miles at 12¢ per mile

and

(c) allowed 32 hours of pay at the Assistant Foreman's rate for the additional time expended in going to Bergland and returning to Ewen on each of the claim dates."

OPINION OF BOARD: The chronology of events in this case are undisputed. Carrier issued bulletin No. 723 on January 27, 1977 to advertise the permanent vacancy of Assistant Section Foreman. It was posted on February 1, 1977. Not receiving any bids by employees in the same titled classification, Carrier considered applicants from the lower classification of Section Laborer.

Claimant, who was a regularly assigned section laborer at the time of the above posting submitted his application but was not selected and assigned to this position until April 11, 1977. He contends that Agreement Rule 8(a) was thus violated since it required

assignment within twenty (20) days from the date of posting or in this instance no later than February 21, 1977.

Rule 8(a) which is quoted in pertinent part reads,

"Bulletin notice covering new positions or vacancies will be posted for a period of ten days, excluding rest days and holidays, at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions during which time employees may file their applications with the official whose name appears on the bulletin. Such bulletin will show location, descriptive title, hours of service and rates of pay of the position bulletined. Assignment will be made within twenty days from date the bulletin is posted."

Carrier, on the other hand, contends that Agreement Rule 7 which pertains to promotions and assignments must also be factored into the selection and assignment calculations since it requires a concomitant merit and fitness judgment. It asserts that this procedural necessity cannot be successfully consummated within the twenty days period applicable to qualified bidders, since it takes time to conduct the prescribed physical and evaluative tests. It argues that claimant's promotional assignment was made pursuant to Agreement procedures and on property selection practices.

In our review of the case, we agree with Carrier that non qualified bidders must be required to pass the prerequisite physical and related fitness examinations. But the sum total selection process should not be unreasonably delayed in the absence of a compelling situation such as hospitalization or vacation leave. Carrier is, of course, entitled to make the position selection, but certainly in a manner that is consistent with its Agreement obligations. Admittedly, there are no contractually specified time limits within which to conduct this clearance process, but it should not take the time consumed herein. We believe, that in the face of this contractual silence, that thirty five days would be reasonably sufficient to complete the selection process. This would include an additional fifteen days beyond Rule 8(a)'s twenty day period. Accordingly, based on this interpretive determination we will sustain the grievance for all time claimed subsequent to thirty five days from the date the bulletin was posted. Paragraph 2(b) of Statement of Claim is denied. Paragraph 2(c) of Statement of Claim is pro-rated in accordance with Opinion.

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 to the extent expressed in the Opinion.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.