

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22646
Docket Number MS-22762

John J. Mangan, Referee

PARTIES TO DISPUTE: (S. A. Norvilas
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(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on January 19, 1979 covering an unadjusted dispute between myself and the Illinois Central Gulf Railroad involving the question:

'Should S.A. Norvilas be awarded Relief Position #8, Belt Tower?'"

OPINION OF BOARD: The factual situation involved in this dispute is reasonably clear. We find a situation in which a permanent vacancy was bulletined indicating an improper work location. After three (3) days had elapsed, the error was detected and a correction bulletin was issued. Subsequently, at the request of the Organization's Representative, the original bulletin was cancelled and a new correctly worded bulletin was posted for the full advertising period as required by the applicable agreement rule.

Claimant had submitted an application for the bulletined position on the basis of the first advertisement. As a result of the re-bulletining of the vacancy, an employee senior to claimant bid for and was awarded the position.

Claimant alleges that the re-bulletining of the vacancy was solely an accommodation for the senior bidder whose application had not been timely received by Carrier.

Carrier argues that the re-bulletining was as a result of the request received from the Organization's Representative and stemmed from the fact that the correction notice relative to the proper work location did not allow all employees the full ten (10) day advertising period which is called for in the bulletining rule.

Carrier further contends that because there was no conference held on the property to discuss this grievance, it is defective on its face and cannot be considered on its merits by this Board.

The case law on this issue of an on-property conference is clear and consistent. Section 2, Second of the Railway Labor Act, as amended, is mandatory in its requirement that disputes shall be considered and, if possible, be decided "in conference". For example, in Third Division Award No. 17166 (Jones) we find:

"The Railway Labor Act requires that before a dispute should be appealed to the Board for a decision, the parties to the dispute should hold a conference on the property to try to reach settlement. This concept was upheld by the United States Supreme Court in *Brotherhood of Locomotive Engineers vs. Louisville and Nashville Railroad Company*, 373 U.S. 33. The reasoning behind this provision is simple--to ensure that the parties meet and try to reach some agreement between themselves in as harmonious fashion as possible. It is only after such a meeting or conference is held and only after the parties cannot reach agreement on the property that this Board's jurisdiction becomes valid."

See also Award Nos. 21440, 14873, 11737 of this Division.

The absence of an on-property conference in this case is a fatal flaw and is sufficient justification for dismissal.

However, even if we were somehow able to overcome this fatal defect, we would still be unable to find in favor of claimant.

There is no showing in the record of this case that Carrier violated any agreement rule. In fact, the opposite appears to be the case. The agreement rule requires that all advertising bulletins be posted "for a period of ten days" and that the job "location" be shown on the bulletin. Neither of these requirements were met by the initial advertising bulletin in this instance. There was, in addition, a valid agreement between the respective parties - Carrier and General Chairman - to re-bulletin the vacancy to comply with the requirements of the agreement rule. Such action cannot be used as a basis for a grievance against the Carrier.

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 and the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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