

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23210  
Docket Number MW-22567

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) Mr. P. C. Christensen was the senior qualified applicant for the 'Position of Section Foreman, Cheneyville Section 4605, Advertised in Bulletin No. 14, December 21, 1976' and his seniority and seniority rights were violated when said position was 'awarded to J. C. Iliff.' (System File No. D-2008/C# 23)

(2) Assistant Division Manager Vaughn L. Stoner failed to disallow the claim (presented to him under date of March 16, 1977) as contractually stipulated within Agreement Rule 47-1(a).

(3) As a consequence of either or both (1) and/or (2) above, Claimant P. C. Christensen shall

'be allowed the differential in pay from his rate and that of Foreman's rate of pay until he is allowed to assume the position of Foreman at Cheneyville.' "

OPINION OF BOARD: Claimant P. C. Christensen was employed as an extra gang foreman with seniority date June 15, 1972. He bid on a position of Section Foreman advertised in a bulletin of December 21, 1976. On January 12, 1977 Carrier announced award of the position to another bidder. By letter of March 7, 1977 to Roadmaster Sanquetti, the Organization's General Chairman objected to the action. The Roadmaster is not the official to whom grievances of employees covered by the BMWE Agreement should be presented in the first instance. Rather, pursuant to Carrier's instruction to the General Chairman of September 24, 1976, such claim for an employee should be presented to Assistant Division Manager, Vaughn L. Stoner. Under date of March 16, 1977, before receiving a response from the Roadmaster to his March 7, 1977 letter, the General Chairman wrote to Mr. Stoner as follows:

"Dear Sir:

In regards to your Bulletin # 14-A dated January 12, 1977 for the position of Section Foreman at Cheneyville, in which award was made to J. C. Iliff with bidders listed as: J. C. Iliff, W. M. Green, P. C. Christensen, R. Pickett and K. E. Sollars.

We have been notified that although Mr. P. C. Christensen has a Foreman's date, he was not allowed the position. Also, Mr. Iliff worked as a laborer and failed to work the position in thirty-five (35) days as required.

According to Rule 4 'Department Limits' Section and Extra Gang Foremen are under the same classification and rank. Their rights are not held to the Section number or Gang number.

According to Rule 8 (b) 'Note: If, after the senior applicant is assigned, he withdraws his application or forfeits the position in accordance with the provisions of Rule 8(e), the next senior applicant will be assigned,' Rule 8 (E) states 'An employee assigned to a position on bulletin, unless engaged in temporary or special service, or on leave of absence in accordance with provisions of Paragraphs (a) and (b) of Rule 17, must accept the position and perform service thereon within thirty-five (35) calendar days from the date of assignment or forfeit his rights to the position.' Mr. Iliff has forfeited his rights to this position.

Irregardless of rule 8(b) note and 8(e), Mr. Christensen holds a seniority date of Foreman June 15, 1972 and should have been allowed the position of Foreman at Cheneyville on January 12, 1977.

"Mr. P. C. Christensen should be allowed the differential in pay from his rate and that of Foreman's rate of pay until he is allowed to assume the position of Foreman at Cheneyville.

Please advise the date Mr. P. C. Christensen will be allowed to work as a Foreman at Cheneyville, Illinois and payroll payment will be made on."

The Assistant Division Manager never has responded to this claim, but Roadmaster Sanquenetti responded to the General Chairman on May 2, 1977 as follows:

"In reference to letter of March 7, 1977 regarding the appointment of Section Foreman at Cheneyville, Illinois.

In investigating this matter I find that Mr. Iliff did not work at position within 35 days of the awarding bulletin and accordance with Rule 3 and Rules 8B and 8E the next senior bidder will be awarded the position. With this action I want your assurance that there will be no claims filed in behalf of employee Iliff. Upon your assurance in writing I will make the above arrangements.

It is my position that Rule 3 applies and next senior bidder that will be assigned to this position is W. M. Green and not Mr. P. C. Christensen. There is no rule that states that an extra gang foreman's date applies to bidding on Section Foreman position."

The General Chairman on May 10, 1977 responded to the Roadmaster as follows:

"Dear Sir:

In reference to your letter dated May 2, 1977 in reply to our letter of March 7, 1977 in which we requested a reissue of Bulletin showing the proper assignment to Mr. P. C. Christensen. You reflect on Rule 3 which has no bearing upon promotion by bulletin.

My letter of March 7, 1977 was a request for proper assignment to bulletin by bidders. Hearing no response, a claim was entered in favor of Mr. Christensen on March 16, 1977 and is now in progress."

Finally, on May 19, 1977 the General Chairman wrote to the highest appeals officer as follows:

"Dear Sir:

On March 16, 1977 we progressed a claim in favor of Mr. Paul C. Christensen to Assistant Division Manager V. L. Stoner for differential in rates of pay between that of Foreman's rate of pay and his present rate. Copy of claim is attached for your ready reference.

To this date, we have not been favored with a with a response. This claim is now in default in accordance with Rule 47 of the Schedule of Rules, form 2625. Rule 47 defines 'If not so notified, the claim or grievance shall be allowed as presented...'

As this claim is now in default, it should be paid as presented. Please advise when claim is to be paid and on which payroll it will be allowed. Also, when Mr. Christensen will be allowed to perform his duties as Foreman at Cheneyville, Illinois.

Mr. V. L. Stoner receives a copy of this letter as notice he is in default and claim is payable as presented." (Emphasis in Original)

Handling on the property concluded with the response of the Assistant Vice President for Labor Relations on July 18, 1977, as follows:

"Dear Sir:

In reference to your letter of May 19, 1977, regarding claim in favor of D. C. Christensen.

In reviewing the file, you first wrote to Mr. Sanquenettti on March 7, received on March 10, bringing to his attention an alleged infraction asking him to take corrective action. Then, only six days later, not waiting to hear from Mr. Sanquenettti, you filed a claim in favor of Mr. Christensen to Mr. V. L. Stoner.

This certainly was not a reasonable time for Mr. Sanquenettti to make a reply. Mr. Sanquenettti wrote you on May 2, 1977, making an offer to correct the situation. Mr. Stoner assumed that you were handling with Mr. Sanquenettti. I do not feel Mr. Stoner was in default insomuch as you were estopped from filing a claim until you had given Mr. Sanquenettti a reasonable time to respond to your complaint of March 6, 1977. In this respect, your March 16 letter to Mr. Stoner is not a proper claim.

Without prejudice to my position above, the agreement was not violated and the claim for Mr. Christensen is without merit because Mr. W. M. Green was the proper applicant to be assigned when Mr. Iliff did not fill the position in 35 days.

In view thereof and in view that the improper claim you have submitted is without factual, schedule rule and/or agreement support, I must necessarily advise it is declined in its entirety."

We have reviewed the record with care and we have rejected de novo arguments raised for the first time at the Board level. We conclude that the claim must be sustained on the grounds that Carrier defaulted by not timely denying the claim filed with the designated Carrier officer on March 16, 1977. See Award 3-22551. Carrier liability for the default is cut off however by the July 18, 1977 denial letter by the highest appeals officer. This decision is based solely upon the procedural violation by Carrier and no opinion is expressed on the merits of the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 for the claimed differential in pay during the period January 12, 1977 through July 18, 1977.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.