

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23518  
Docket Number SG-23497

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Burlington Northern Inc.

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern, Inc:

On behalf of Mr. J. J. Wilkowski, seniority dated April 1, 1947, CTC Signal Maintainer, Brainerd, Minnesota, account violation of the current Signalmen's Agreement, particularly Rule 22-A, when Mr. G. L. Flagan, Regional Signal Engineer, deliberately and erroneously awarded the position of Signal Inspector to a junior employee, Mr. C. J. Rutten, seniority dated October 14, 1963."

(General Chairman file: TC-79-204. Carrier file: SI-6(c)-3 11/14/79)

OPINION OF BOARD: The essential facts in this case are undisputed. Claimant was on vacation from August 13, 1979 to August 18, 1979 and returned to work on August 20, 1979. On this day, he received Employment Bulletin No. 56-79-TC-P, dated August 16, 1979, announcing the Signal Inspector's position at Staples, Minnesota and stating that bids would be accepted until 12:00 midnight on August 29, 1979. Claimant submitted his bid for this position by U.S. Mail on August 22, 1979 but it was not received by the Regional Engineer-Signals Office until August 27, 1979. Claimant contends that Carrier violated the controlling Agreement, particularly Rule 22(A), when it awarded the position to a junior employee since he complied with the applicable bid notification procedures.

Rule 22(A) provides:

"Seniority shall consist of rights based on relative length of service of employees as hereinafter provided and may be exercised only when vacancies occur, new positions are created or in reduction in force. Seniority shall be confined to the Chicago, Twin Cities, Omaha, Billings, Seattle and Portland Districts as described in Rule 21 of this Agreement."

Carrier contends that it complied with the Agreement since it was compelled by Article 41(B) thereof to accept only those applications that were received on or before 12:00 midnight on the 8th day following date of bulletin, which was August 24, 1979 for the Signal Inspector's position. This rule reads:

"(B) Applications for positions advertised by bulletin must be received by the officer whose name appears on the bulletin on or before 12:00 midnight on the 8th day following date of bulletin and assignment made on next regular semi-monthly bulletin."

In our review of this case, we concur with Carrier's position. Rule 22(A) which is at issue in this dispute does not provide any basis for concluding that it was violated. It is a seniority rule, which does not address, either directly or inferentially, the violation asserted in Claimant's petition and we are constrained by our appellate authority from interpolating by judicial construction, language that would change this rule. There is no language in this rule which covers the nature of the violation cited in the instant claim and thus we must deny it.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.

