

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24209
Docket Number MW-24107

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Detroit, Toledo and Ironton Railroad Company

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

(1) The Carrier violated the Agreement when it failed to post 'Advertisement T-1829' at the headquarters of 'A' Gang and, as a consequence thereof, awarded the position advertised thereby to an applicant junior to H. P. Moriarity.

(2) Because of the aforesaid violation, Mr. H. P. Moriarity be afforded a seniority date as track patrolman retroactive to May 21, 1979."

OPINION OF BOARD: This dispute turns on a question of fact. Petitioner argues that the Carrier failed to post an advertisement of a position resulting in the inequity triggering this Claim. Carrier, on the other hand contends that the advertisement was indeed posted and hence there was no violation of the Agreement.

The record reveals that the Organization's position is based on a letter signed by seven members of the gang which stated, inter alia: "We the undersigned did not see this advertisement and many others until it was too late."

The Carrier, through its Engineer Maintenance of Way and Structures, presented its version as follows:

"In view of your letter dated June 14, 1979, stating that the DTR&I had violated the provisions of the Effective Working Agreement when it failed and refused to post a Track Patrolman vacancy with headquarters at Springfield, Ohio.

The company did post advertisement T-1829, advertising for one (1) Track Patrolman at Springfield, Ohio and said advertisements were sent to all foremen in the M of W Department.

Foreman J. W. Mullins on the "A" Gang states he had received the advertisement and handed it to Mr. J. E. Wallace, a Trackman on the "A" Gang, who posted the advertisement.

"On June 26, 1979, I spoke to Mr. Wallace questioning him if he did post this advertisement and he stated to me that he did.

The company must take the position of being unwilling to allow your request and it is therefore declined."

It is apparent that the statement of the seven employees is, on its face, insufficient to establish that the advertisement was not posted. However, even granting, arguendo, that Petitioner is correct in its position with respect to Carrier's deficiency, this Board is unable to resolve the factual conflict presented. It must be concluded, therefore, that Petitioner has not presented sufficient proof to prevail particularly in the face of the evidence proffered by Carrier. Consequently, the Claim must be 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

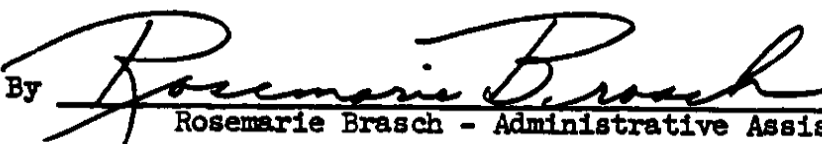
That the Agreement was not violated.

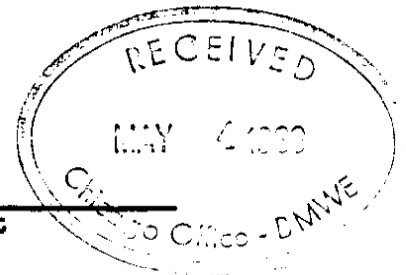
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 14th day of March 1983.