

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24507
Docket Number CL-24551

Robert Silagi, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9572) that:

1. Company violated the agreement between the parties on December 18, 1979, when it refused to accept the senior application for Bulletin No. 150, dated December 4, 1979, which advertised (sic) a vacancy of Lift Truck Operator, at McComb, Mississippi.

2. Company shall now be required to compensate Clerk K. R. Dillon at the pro rata rate of \$64.16 per day beginning December 18, 1979 and continuing each Monday through Friday workweek thereafter, until he is allowed to occupy the position in line with his seniority, the amount claimed is in addition to any other compensation received.

3. Should the Company be required to show a general location, and a position number to distinguish one position from another, and one work location from another?

OPINION OF BOARD: The crux of this case is under what circumstances, if any, may a Carrier refuse to accept a bid for a position from an applicant who is qualified by seniority, fitness and ability.

In November 1979, the Carrier issued Bulletin No. 137 the pertinent parts of which are reproduced below.

<u>"Title</u>	<u>Location</u>	<u>Rate</u>	<u>Hours</u>	<u>Off Days</u>
Lift Truck Operator	Materials Dept. McComb, Miss.	\$8.02/hr*	7 A.M.-3:30 P.M. (30 min. lunch)	Saturday & Sunday

* Rate includes 32 cents per hour COLA, effective
July 1, 1979.

DUTIES: Will load, unload, store and distribute material in and around shop grounds. Performs any other duties assigned by supervisor."

Claimant bid on and was awarded one of these positions. His assignments were regularly performed at the south end of the shops and outside the shop building. The following month another vacancy arose for the position of lift truck operator for which the Carrier issued Bulletin No. 150. Except for the date the two bulletins were identical. The former occupant of the position advertised in Bulletin No. 150 had regularly performed his duties at the north end of the shops and inside the shop building. Claimant apparently perceived position 150 as more desirable than his own because he believed that he would work indoors rather than out-of-doors. Claimant submitted his bid on position No. 150. Carrier refused to accept claimant's application and awarded the position to a bidder who had less seniority than claimant.

The Organization argues that Carrier violated Rules 3(a), 6(b), 8(a), 16(b), 17 and 18 of the Agreement. These are briefly summarized as follows:

Rule 3(a) establishes seniority for new employees as of the date the employees' pay starts in a seniority district.

Rule 6(b) states that when two or more employees have adequate fitness and ability the senior employee has superior rights to bid a new position or vacancy.

Rule 8(a) mandates that new positions and vacancies will be promptly bulletined:

"...bulletin to show location, title, and brief general description of position, rate of pay, assigned hours of service, assigned meal period, and assigned rest days."

Rule 16(b) provides, in essence, that in the event of a general reduction in force seniority shall control.

Rule 17 states that seniority rights of employees may be exercised only in case of vacancies, new positions, reduction of forces and change of headquarters.

Rule 18 allows employees to bid on multiple vacancies and new positions, stating their preference.

There is no doubt about the fact that Claimant had seniority over the successful applicant for position No. 150. Nor was any question raised about Claimant's fitness and ability to perform the duties of lift truck operator. Rules 3(a) and 6(b) are not in issue in this case. Rules 16(b) and 18 are irrelevant since no facts herein bring said rules into operation.

A close examination of Bulletin No. 150 shows that it fully meets the requirements of Rule 8(a). The bulletin unmistakably gives the details of the position with sufficient particularity to inform any potential applicant of the nature of the job. The Organization contends, however, that the Carrier is "...required to show a primary work location for each position, and that each position be distinguished one from another." This argument is based upon the Organization's allegation that the past practice at McComb was to assign truck lift operators to primary duties and work locations and that these duties and work locations remained constant. The Carrier concedes that although truck lift operators usually do work in the same locations this is not invariable. The lift truck operators are subject to their supervisors' instructions and do perform duties wherever needed. The Organization admits that flexibility in assignment to different work locations within the materials department is permitted by the Agreement. The argument then boils down to whether Claimant may select a particular site as the only location where he can do his work. This contention was rejected in Award 12386 (Englestein).

The Organization further argues that a requirement for a bulletin to indicate a primary work location for each position and to distinguish each position from another is desirable. The Carrier opposes such a requirement citing certain practical reasons. This Board need not explore the advantages and disadvantages of that requirement nor resolve the conflict. It is well known that this Board has no authority to write new rules, no matter how desirable they seem to be. Its function is to interpret the Agreement as written. The Organization's request to rewrite Rule 8(a) is best decided at the bargaining table.

On its face Rule 17 lends some credence to the Organization's argument that Claimant has an absolute right to bid on a vacancy. The facts of this case, however, lead us to an opposite conclusion. The record establishes that all lift truck operators at the materials department in McComb have the same duties, that they may be and are assigned to different work locations at management's discretion, a fact conceded by the Organization. All lift truck operator positions under Bulletins 137 and 150 are interchangeable. Claimant in effect sought to bid on a position which he already had. Regardless of how Claimant perceived the "primary" location of position No. 150, permitting him to bid on his very own job is untenable, a futile gesture.

In view of our decision to deny this claim it is not to be construed as barring an applicant from bidding on a position which represents lateral movement rather than promotion.

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

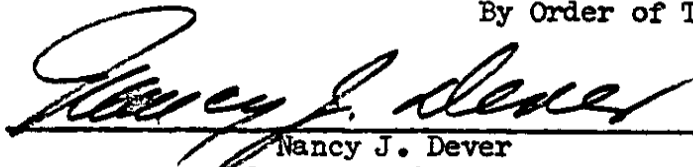
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.