

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25163
Docket Number MW-24616

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company

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

(1) The Agreement was violated when the position of production foreman as advertised by Bulletin No. GR-165 dated December 12, 1980 was awarded to an applicant junior to Foreman F. D. Lee (System File C-TC-1090/MG-3050).

(2) Claimant F. D. Lee shall be allowed the difference between what he earned in a lower rated position and what he should have earned as a production foreman if he had been awarded the production foreman's position beginning with the date of the junior applicant's initial assignment thereto and to continue until Mr. Lee is awarded the position of production foreman.

OPINION OF BOARD: The claim alleges that the Carrier violated the Agreement by awarding a bulletined position to a junior applicant.

On December 12, 1980 the Carrier issued Bulletin Number GR-165 for the position of Production Foreman, specifying that applications "will be accepted from December 16, 1980 through December 26, 1980". The bulletin was issued pursuant to the form outlined in Rule 17, which specifies that applications for bids "will be received" within the posted dates. The Claimant mailed his bid by certified mail on December 23, 1980. It did not arrive at the Carrier's office until December 29. The Carrier considered the Claimant's bid untimely and awarded the position to an applicant having less seniority.

The Organization argues that the controlling date in determining whether a bid is timely is the postmark date of the letter. Thus, the Claimant's letter, postmarked December 23, 1980, was a timely application. In support of its argument, the Organization notes that the mails are the usual means of communication between the parties, and that the Claimant had a right to rely on their regularity. The Organization also argues that Rule 5 (c)(1), which specifies "postmark date" as the date of notice to employees being recalled from cut-off status, should also control in this situation.

The Carrier's argument is that the language of the bulletin, which complies with the form specified in Rule 17, clearly means that a timely bid must be received by the Carrier before the specified closing date. Moreover, it says, the date of receipt has always been the controlling standard for timeliness of bids. The Carrier also makes procedural arguments regarding the Organization's processing of the claim.

Upon careful review of the record, the Board concludes that the claim must be denied. The form of acceptance outlined in Rule 17 (f) of the Agreement specifies that the bid must be "received" by the Carrier between the dates posted. The word "received" clearly and unambiguously means that the application must arrive in the hands of the Carrier by the closing date. In the absence of ambiguity, the contract language is controlling. The clear intention of Rule 17 is further confirmed by part (g) of Rule 17, which provides that, "promotions to new positions or to fill vacancies will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the gangs...". We conclude that there is simply no acceptable basis in the record for the Organization's interpretation.

As regards the Carrier's procedural arguments, the Board finds that they do not render the claim defective. The Organization was within the proper time limits and violated no agreement provisions when it resubmitted the initial claim letter on February 6, 1981. This does not, however, affect our findings as to the timeliness of the bid.

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 November 1984.