

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25511
Docket Number MW-24795

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 spot tamper operator as advertised by Bulletin GR-81 was awarded to an applicant junior to Trackman R. M. Bauer by Bulletin GR-81-A (System File C-TC-1152/MG-3147).

(2) (a) Bulletin GR-81-A shall be cancelled and rescinded.

(b) The position of spot tamper operator shall be awarded to Mr. R. M. Bauer with seniority as such as of the date of the junior applicant's assignment thereto.

OPINION OF BOARD: A review of the record before this Board establishes that Bulletin GR-81, posted on May 8, 1981, advertised the position of spot tamper operator, and stated "applications for which will be accepted from May 8, 1981 thru May 18, 1981". In the section of the Bulletin captioned "Remarks" there appeared the following: "Those desiring to bid on this position should make written application in own handwriting to the undersigned within the dates specified". Claimant R. M. Bauer, Trackman, submitted his written bid by mailing it on May 16th through the United States Postal Service, using certified mail. His application was received by the Carrier on May 19th and was considered an untimely bid. The position was awarded to a less senior employee than Claimant, but one whose application was the most senior of those received by May 18th.

Rule 17(f) sets forth the Form of the Bulletin. There is no specification as the medium by which the application is to be made, but the Rule specifies that the Bulletin recite "Those desiring to bid on the position(s) should make written application to the undersigned within the period specified above". Bulletin GR-81 conforms to this requirement and provides notice to a potential applicant of the time frame within which applications will be accepted. In this Board's opinion the plain meaning of this language, and the language of the Bulletin in question, is that the application must be in the Carrier's possession by May 18th. Webster's New Collegiate Dictionary defines "accept" as "to receive (a thing offered)". Thus receipt of the Claimant's application on May 19th made it untimely.

The Organization contends that the parties contemplated mailing during the period set forth in the Bulletin as sufficient, citing Rule 5(C)(1) which provides in part that "Employees recalled hereunder must report within ten (10) calendar days after being notified by mail or telegram at the last known address or forfeit seniority. Postmark date of letter or telegram will constitute date of notice". This contention is not persuasive. First, the Rule specifically deals with different subject matter, i.e., "Rights Of Trackmen In Force Reduction". Second, it demonstrates that where the parties intended to cover the role of the US Postal Service they were capable of negotiating contract language to deal with its vagaries. Had the parties intended to have the time of mailing applications controlling they could have negotiated similar language in Rule 17.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.

