

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25686

Docket Number MW-25635

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Southern Pacific Transportation Company  
(Western Lines)

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

(1) The Agreement was violated when the position of welder on Welding Gang No. 16 as advertised by Bulletin No. 7-C was awarded to Welder S. C. Klaffke instead of Welder S. M. Poplin on August 9, 1982 (Carrier's File M of W 3-148).

(2) (a) The position of welder on Welding Gang No. 16 shall be assigned to Welder S. M. Poplin and he shall be compensated the differential in pay between that of a welder and welder helper for each day beginning August 9, 1982 and all days subsequent thereto until the violation is corrected.

(b) Welder S. C. Klaffke shall be allowed a displacement of his choice pursuant to Rule 13 of the Agreement.

OPINION OF BOARD: The Claimant entered the service of the Carrier on April 16, 1964. He was regularly assigned to Welding Gang No. 16 that had changed its headquarters. As a result, the Claimant was entitled to either indicate his preference to positions at the changed headquarters or to make a displacement elsewhere.

By Bulletin No. 7-C, dated July 30, 1982, the Carrier advertised that vacancies for the positions of Welder and Welder Helper were open for seniority bid and that applications would be accepted until Noon on August 9, 1982. The Claimant submitted his application, postmarked August 4 showing his first choice to be the Welder position and his second choice to be the position of Welder Helper.

S. C. Klaffke telephoned to place his bid for the Welder position as his first choice and the Welder Helper position as his second choice on Welding Gang No. 16. He advised over the telephone that he would confirm his bid in writing which he did by submitting his bid, postmarked August 10, 1982. Klaffke's position as a Welder on Welding Gang No. 45 had been abolished on July 30, 1982. The position of Welder on Welding Gang No. 16 was awarded to Klaffke.

The Organization contends that the Claimant's application was received by the Carrier within the time prescribed on the Bulletin Notice, but Klaffke's application was not received until the day after the Bulletin closed, thus precluding the Carrier from giving consideration to his bid because it was not timely submitted.

Contrary to the provisions of revised Rule 23, the Carrier improperly advertised the change of headquarters of Welding Gang No. 16, on July 30, 1982. However, even if Rule 23 had been applied properly the Claimant and Klaffke would have filled the positions of Welder Helper and Welder on Welding Gang No. 16. This result would have been reached because the Claimant was on vacation from August 2 to August 13, 1982. When the Claimant reported for duty on August 16, he would have had to fill the Welder Helper position because due to Klaffke's greater seniority he was entitled to fill the Welder position either by displacement or seniority bid. Klaffke was entitled to fill the Welder position commencing August 2, 1982, not only because of the Claimant's vacation absence but because his position of Welder was abolished on July 30, 1982. He was permitted to fill the position of Welder on Welding Gang No. 16 on August 2, 1982 pending Bulletin Assignment under the applicable terms of Rule 13 (b) of the Agreement. Pursuant to Rule 13 (b), Klaffke exercised his displacement right to the position of Welder before the Claimant returned from his vacation. By reason of these circumstances, the instant claim is rendered moot.

The Board considers it important to address another issue. Rule 10 (b) requires that applications for new positions and vacancies are to be in writing. Contrary to the Carrier's position, a past practice of calling in bids may not alter a clear and unambiguous provision of the Agreement. Despite this conclusion on this aspect of the dispute between the parties, the instant claim is moot.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

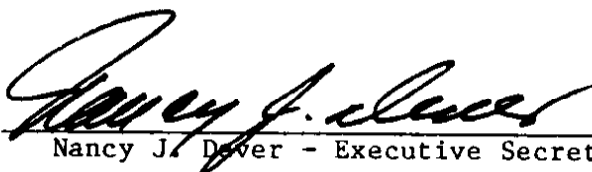
That the claim is moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.

