

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26319
Docket Number MW-26046

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it cancelled Advertisement No. 46-NY-1182 on January 23, 1983 (System File NEC-BMWE-SD-608).

(2) As a consequence of the aforesaid violation, Claimant T. B. Piscione shall be placed on the foremen's seniority roster with seniority dating from January 23, 1983."

OPINION OF BOARD: By Bulletin dated November 15, 1982, Carrier advertised Position of Foreman Switch Rail/Renewal Gang M-422, including Rest Days Saturday and Sunday. Claimant bid for that position. However, Carrier rebid the post on February 2, 1983, account that the rest days had been incorrectly listed in its earlier posting. Claimant was not awarded the reposted job.

As a result, the Organization filed this Claim. Carrier rejected it. After being handled on the property, it was advanced to this Board for adjudication.

The Organization contends that Carrier violated Rules 2 and 3 under the facts of this case. It points out that Rule 3 requires the announcement of a successful applicant within seven days after the close of receipt of applications. It also notes that Rule 3(e) permits the cancellation of an advertisement within seven days after it has been posted. Here, the Organization insists, the announcement was not timely cancelled; nor was Claimant awarded the position. Therefore, the Organization argues that Claimant should have been awarded the post. Accordingly, it asks that the Claim be sustained in its entirety.

Carrier, on the other hand, insists that it could readvertise the position inasmuch as the prior announcement contained incorrect rest days. Moreover, Carrier argues, Claimant would not have been the most senior bidder for the readvertised post. Thus, it maintains that it properly awarded that job to another individual. Therefore, it asks that the Claim be rejected.

We are convinced that the Claim must fail. It is undisputed that Claimant is junior to the individual who was awarded the newly advertised position. If Carrier had awarded it to Claimant, it would have violated applicable provisions of the Agreement. This it could not do.

Moreover, Claimant was not entitled to the first position advertised. Both parties recognize that the rest days were stated in error on that bulletin. Stated simply, then, no such position existed. As such, Claimant could not be given a vacancy which did not exist. Thus, we are convinced that Carrier did not violate the Agreement under the facts of this case. Accordingly, the Claim must be rejected.

One final point. We note that the parties have apparently not complied with the time limits. We wish to point out that in another case this failure might lead to a different result. The parties are so advised.

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 May 1987.