

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27336
Docket No. MW-26675
88-3-85-3-423

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 failed to properly advertise B&B Department positions on the Philadelphia Division thereby depriving Messrs. T. R. Hudson, W. Callahan, G. A. Smith, S. Tiberi and R. T. James the opportunity to establish proper ranking on the Southern District B&B Department Seniority Roster in accordance with their basic seniority (System Dockets NEC-BMWE-SD-1181, 1182, 1183, 1184, 1186 and 1195).

(2) As a consequence of the aforesaid violation, the Southern District B&B Department Seniority Roster shall be corrected to reflect the proper seniority of the claimants in accordance with the roster protest letter* filed by each of the claimants, respectively dated:

<u>Claimant</u>	<u>Date of Roster Protest Letter</u>
T. R. Hudson	June 27, 1984
W. Callahan	June 26 and 27, 1984
G. A. Smith	June 13, 1984
S. Tiberi	June 25, 1984
R. T. James	Undated - received by Amtrak June 25, 1984.

*The letters of roster protest will be reproduced within our initial submission."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The relevant facts of this claim are not in dispute. Claimants are regularly employed in Carrier's Philadelphia Division. The Organization filed roster protests in mid to late June of 1984. It alleged that Carrier had improperly failed to advertise positions in the Philadelphia area. Carrier timely denied this allegation. The claim is now before this Board for adjudication.

The Organization submits that the April 30, 1976, Agreement requires Carrier to "advertise positions throughout the entire 'Consolidated Seniority Roster' area." In the Organization's view, Carrier's failure to do so has resulted in junior employees with less total Carrier service, possessing greater seniority than more senior employees within certain classifications. Accordingly, the Organization asks that the claims be sustained.

Carrier, on the other hand, asserts that its actions were proper. The Memorandum of Agreement does not require, in Carrier's view, that positions established in other Divisions or work zones be advertised in Claimants' work zones. Carrier argues that advertising was proper under Rule 14(c) in that positions available within a zone were advertised within that zone. Accordingly, Carrier asks that the claims be denied.

After careful review of the record evidence, this Board is convinced that the claims must be denied. This is true for several reasons.

First, Rule 3 requires that Carrier advertise positions "for a period of seven days at the headquarters of the gangs..." There is no evidence in the record to indicate that Carrier was not in full compliance with this Rule.

Second, Rule 14 provides that positions are to be advertised in the Track Department and Bridge and Building Department on the basis of the "working zone." The Organization insists that Carrier is required to advertise positions on a district-wide basis. The clear language of the Agreement contradicts this interpretation. As numerous Third Division Awards have noted, this Board does not possess the authority to modify the Agreements of parties to achieve an unintended result. (Third Division Awards 1248, 8073, 16489, 17474.)

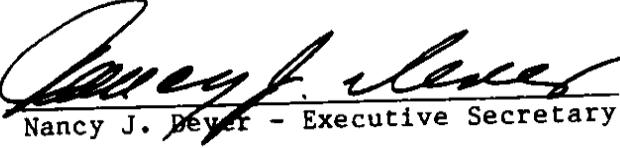
The clear language of Rule 14 supports Carrier's advertisement of positions solely within the work zone. As such, we must conclude that Carrier acted properly.

Accordingly, and for the foregoing reasons, the claim must be denied.

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 1988.