

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it awarded the trackman's position at Urbana, Ohio advertised by Bulletin No. 40 dated April 16, 1984 to a junior employee instead of Mr. D. D. Moore (System Dockets CR-974 and CR-975).

(2) Because of the aforesaid violation, Claimant D. D. Moore shall be allowed three (3) hours and twenty (20) minutes of travel time each week and mileage allowance (100 miles each week) continuing until he is assigned to the position referred to in Part (1) hereof or until this matter is otherwise resolved."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

On May 3, 1984, a Claim was filed by the District Chairman on behalf of the Claimant on grounds that a position which he had bid on at Urbana, Ohio was awarded to a junior employee. According to the record, Bulletin No. 40 was posted and dated April 16, 1984. Bids were up on April 23, 1984. The Claimant alleges that he sent his bid in on April 20, 1984, and that it was postmarked on that date at Muncie, Indiana. The bid was not received by the Carrier, however, until April 25, 1984.

The above facts are not in dispute. The Claimant argues that he should have been awarded the position since his bid was postmarked prior to April 23, 1984. The Carrier argues that the Claimant was not, and should not be, awarded the position since his bid arrived late, or after April 23, 1984, in its offices. As the Division Engineer put it in his denial of the Claim: "...postmarks do not count."

The Rule of the Agreement which is applicable to this Claim reads as follows, in pertinent part:

"Rule 3, Section 3: Advertisement and Award

(a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

(b) Advertisements will be posted on Monday or Tuesday and shall close at 5:00 P.M. on the following Monday. Advertisement will be posted at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions, during which time an employee may file his application.

(c) Application for new position or vacancy advertised under this Rule may only be made by active employees and must be prepared on Form CT-88, with receipt attached thereto, properly filled out, and filed with the official whose name appears on the advertisement, who will detach receipt, sign, and return same to the applicant.

(d) Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven (7) days after the close of the advertisement.

This Rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days."

Rule 3, Section 3 states that advertisements will be posted on Monday or Tuesday and shall "...close at 5:00 PM on the following Monday." Bulletin No. 40 was posted on April 16, 1984. This was a Monday. Contractually, the Carrier was not obligated to post the Bulletin until Tuesday. By posting it on Monday it permitted employees a longer period of time to find out about and decide on whether they wanted to bid on the position. The Board notes that the Claimant did not actually put his bid in the mail until April 20, 1984, as he states. This was a Friday. The Claimant waited almost until the last day, therefore, to submit his bid by mail. The rule of reasonableness would suggest that the Claimant should not have had an infallible trust that the postal

service deliver his bid, under these circumstances, on time. It was possible for his bid to have arrived on time, but it was not necessary that such had to happen. The Carrier, therefore, posted the position during the longest time-period possible under the Agreement, and the Claimant sent in his bid for the position during what was almost the shortest time-period left to him prior to the expiration of the Bulletin.

The Claimant argues that he fulfilled the provisions of Rule 3 by having his bid postmarked during the seven (or six) day period. The Agreement Rule does not address postmarks.

There is arbitral precedent in this industry which holds that a communication by either party is "effected upon the mailing or posting thereof" (Second Division Award 6352; also Award 3541 and Third Division Awards 11575, 13270, 16537 by reference). Without denigrating such principle (although it is not universally held to be correct: see Third Division Award 13677), the Board must conclude here in view of the evidence of record before it, that the actions of the Claimant, by the manner in which he bid on the job, were tantamount to negligence. He effectively depended upon regular mail service to deliver his bid over a week-end and thus unreasonably depended upon what some Awards in the line of precedent cited above call the "regularity of the mails" (Second Division Award 3541; also Third Division Awards 10490, 13270). Fourth Division Award 1908 states that: "...time limitations serve an important purpose and must be enforced in the interest of orderly process." To sustain the instant claim would, in the estimation of the Board, be disruptive to the interest of orderly process by establishing precedent permitting other than reasonable application of the principle permitting postmarks to serve as criteria for timely communications in this industry.

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 16th day of December 1988.