

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Northeast Illinois Regional Commuter Railroad  
(Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10225) that:

1. Carrier violated the Agreement when it refused to assign Ms. Janice A. Mogan to the position of Second Shift Agent/Operator, Elgin Station, advertised in NIRC-Milwaukee District Clerks Bulletin #7, dated February 19, 1986.

2. Carrier shall now be required to award Ms. Mogan the position of Second Shift Agent/Operator, Elgin Station.

3. Carrier shall also be required to compensate Ms. Mogan a day's pay at the rate of \$12.3971 per hour (plus increases) for each day commencing March 10, 1986 and continuing thereafter until she is assigned to the position."

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.

On February 19, 1986, the Carrier posted a bulletin advertising a permanent vacancy on a clerical position at Elgin, Illinois. Applications for this position could be filed with the Director of Suburban Operations through March 1, 1986. A copy of the bulletin was also forwarded to the AVP Labor Relations of the Soo Line Railroad for posting in accordance with agreements made in conjunction with the transfer of commuter service from the Milwaukee Road to the Northeast Illinois Regional Commuter Railroad Corporation (NIRC).

(The Soo Line Railroad acquired the Milwaukee Road through bankruptcy proceedings). When the Soo Line declined to post the bulletins, the Director of Suburban Operations advised the Organization it could circulate the bulletin and bids would be accepted through March 10, 1986.

Apparently, the Claimant became aware of the vacancy and on March 3, 1986, submitted a bid for the position stating in pertinent part:

"I am a BRAC member presently holding the position of Chief Clerk in the Chicago Sales Office for the Soo Line Railroad. My seniority date is November 14, 1986."

On March 13, 1986, the Claimant was interviewed by the Carrier's Employment and Benefits Specialist. By letter dated April 24, 1986, the Claimant was informed the Carrier had identified and selected another candidate. Thereafter, on April 28, 1986, this Claim was filed.

Careful analysis of this record establishes that until the Claimant filed this Claim, the Carrier was unaware of any rights she may have had under the Transition Agreement. The Claimant's March 3, 1986, bid letter identifies her as a Soo Line Railroad employee and makes no mention of holding seniority on the MILW/Soo Seniority District 3 roster. Accordingly, when the Claimant did accurately represent her status to the Carrier on or about April 28, 1986, the position had been filled. Given these circumstances, this Board cannot find that the Carrier's actions were improper since it proceeded to award the vacant position based on the information to which it had access to. There is simply no evidence showing the Carrier knew the Claimant had preferential bidding rights as a Milwaukee Road employee since she identified herself as a Soo Line employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.