

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28562
Docket No. CL-28320
90-3-87-3-869

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Union Pacific Railroad Company
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10222) that:

1. Carrier violated the Clerks Agreement in effect between the parties when it failed and refused to honor Clerk R. Marshall's bid application for positions of Junior Rate and Revising Clerk in its General Accounting office at St. Louis, Missouri.

2. Carrier's action violated Rules 6 and 10 of the Agreement.

3. Carrier shall now be required to compensate claimant, eight (8) hours at the pro rata rate of pay of either of Jobs No. 217, 287 or 282, Junior Rate and Revising Clerk, rated \$101.94 per day beginning October 24, 1986, and continuing, five (5) days per week until assigned to the position; and additionally be compensated \$3.60 per day as provided by Rule 10 of the Agreement."

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.

In this dispute the Organization contends that Carrier violated Rules 6 and 10 of the Agreement when it refused to honor Claimant's bid application for positions of Junior Rate and Revising Clerk in its St. Louis, Missouri General Accounting Office. Specifically, Claimant submitted bid applications on October 22, 1986, for three (3) vacancy positions in the St. Louis, Missouri General Accounting Office. This was a different seniority district from where he was employed and, accordingly, he relied upon the specific language of Rule 6(d) to secure one of the vacant positions. This provision reads:

"Employees filing applications for positions bulletined on other districts or on other rosters will, if they possess sufficient fitness and ability be given preference over non-employees."

Because Carrier did not receive bid applications from employees possessing a clerical seniority date within the seniority district, the positions were not immediately filled. By letter dated November 10, 1986, the Organization filed a Claim on behalf of Claimant wherein it charged that Carrier violated Agreement Rules 6 and 10 by not honoring Claimant's bid applications. Its position rested on the observation that since there were no other applicants and no other employees were assigned to the positions, Carrier had an obligation to assign Claimant to one of the vacancies. In response, Carrier argued that since no other employees were hired for the positions, there could be no violation of Article 6(d). As the Claim progressed, this line of argument was consistently pursued until the Organization learned that circa November, 1986, Carrier transferred clerical employees from other seniority rosters to the positions. Carrier took umbrage at the Organization's modification of the initial claim, but argued that the Organization could not establish a violation of Rule 6. It reviewed the specific provision of Rule 6 with reference to the factual conditions of Claimant's employment on Seniority Roster No. 43 and asserted that none of these provisions was applicable to Claimant's circumstances. More pointedly, it maintained that Rule 6(d) applied only to the preference standing of Carrier employees to nonemployees. Consequently, since nonemployees were not hired for any of these positions, Rule 6(d) was inapplicable.

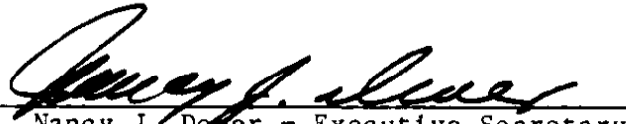
In considering this case, the Board concurs with Carrier's position. Careful analysis of Rule 6, particularly paragraph (d) thereof, reveals that said provision does not apply to the facts herein. There were no nonemployees hired for these positions and, as such, this provision cannot support the Claim. Rule 6(d) is clear, compelling, unambiguous language and it allows no other interpretation. With respect to the other portions of Rule 6, we find no correlation between their intended application and what actually occurred in this dispute. Since we find no violation of Rule 6, Rule 10 has no practical relevancy. As an aside it might be that Carrier acted hastily when it rejected Claimant's bids, but its actions technically did not violate the Agreement Rules cited.

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 27th day of September 1990.