

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28753
Docket No. MW-28423
91-3-88-3-217

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company

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

(1) The Carrier violated the Agreement when it revoked the First Class Carpenter seniority of Mr. J. M. Duval effective March 9, 1987 (Carrier's File AMWB 87-07-23 A).

(2) The First Class Carpenter seniority of Mr. J. M. Duval shall be restored unimpaired and he shall be compensated for all wage loss suffered beginning March 9, 1987 and continuing until such time as the violation is corrected."

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 waived right of appearance at hearing thereon.

Prior to the time the dispute arose, Claimant established seniority as a First Class Carpenter but his seniority was insufficient to allow him to hold a First Class Carpenter position. At the relevant time, Claimant was a regularly assigned Second Class Carpenter at the Carrier's B&B Shop at Havre, Montana.

On November 25, 1986, the Carrier bulletined First Class Carpenter positions headquartered at Havre and with the East Mobile Crew. Thereafter, as a result of a protest, the Carrier determined that Claimant had not bid on the First Class Carpenter positions and concluded that Claimant forfeited his First Class Carpenter seniority under Rule 8(g) ("An employee ... on any seniority roster to a position in a rank lower than the highest rank in which he holds seniority ... must, at the first opportunity, take service in the higher ranks in which he holds seniority ... when vacancies of more than

thirty (30) calendar days' duration occur, or when new positions of more than thirty (30) calendar days' duration are created ... [and a]n employee who fails to take service in a higher seniority rank ... will forfeit all seniority rights in the seniority rank ... in which he fails to so exercise his seniority rights"). This Claim followed.


The record establishes that the bulletin was properly posted in plainly observable places and, in fact, was posted at times Claimant was in the area of the posting. Specifically, the record demonstrates that the bulletin was posted on the B&B and section bulletin boards where Claimant reports and quits. Indeed, evidence submitted by the Carrier demonstrates that during the first week of December 1986, (prior to the bid closing) Claimant spoke with an employee who specifically mentioned to Claimant that the bids were out for the First Class Carpenter positions. The record, therefore, further demonstrates that Claimant actually knew of the bids but failed to act. By failing to bid on the First Class Carpenter position, Claimant forfeited that seniority under Rule 8(g).

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 30th day of April 1991.