

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29494
Docket No. CL-29647
93-3-91-3-157

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

PARTIES TO DISPUTE: (Allied Service Division/Transportation
(Communications International Union
(Western Weighing and Inspection Bureau
(Transportation Services

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10556) that:

(1) The Bureau violated Rules 2, 3, 4, 5 and 8, among others, when it failed to award Position No. 281, Traveling Agent/Grain Weight Inspector, Houston, Texas to Mr. H. F. Nester.

(2) The Bureau shall now be required to award Position 281, Traveling Agent/Grain Weight Inspector, Houston, Texas to Mr. H. F. Nester.

(3) The Bureau shall further be required to compensate Mr. H. F. Nester the rate of pay of this position from November 6, 1989 until he is placed on this 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 waived right of appearance at hearing thereon.

On August 25, 1989, the Carrier issued Bulletin No. 2 advertising Position 281 in its Dallas District. The position was that of Traveling Agent/Grain Weight Inspector. The position had become vacant because of a retirement. The Bulletin gave a description of the position and stated that applications would be received until the close of business, September 11, 1989.

Applications were to be sent to the General Agent, Dallas, Texas. According to the record, no applications were received from the Dallas District by the closing date of the Bulletin.

The Claimant, who holds seniority in the Carrier's Kansas City District, heard about the opening in the middle of September 1989, and contacted the General Agent in Dallas. The Claimant was advised that the position was still open and he was invited to submit an application. The Claimant did so on September 22, 1989. In his application the Claimant stated the following which is cited here in pertinent part:

"Please consider this as my application on unfilled bulletin #2, dated August 25, 1989, for the job of Traveling Agent/Weight Grain Inspector, position 281, in Houston, TX.

I wish to draw attention to some of the training and experience I have had which would qualify me for the position.

- a.) My present job includes inspection of grain cars for use at Crete Mills and other elevator use.
- b.) I have taken several college courses in math and accounting.
- c.) I have received extensive training in quality control while spending 12 years in the military.
- d.) My seven years experience as a clerk for the Union Pacific Railroad included the designation as a Certified Weighmaster.

I believe all of the above contribute to a broad-based background for the position applied for.

My seniority date is October 11, 1988."

On October 17, 1989, the Claimant was advised that the position had been awarded to another person, and on November 6, 1989, the Carrier issued Bulletin no. 2-A announcing assignment of Position 281 to a person who had never worked for the Carrier.

When this was discovered, the District Chairman filed a claim on December 13, 1989, on grounds that the Carrier violated Rule 2 of the Agreement when it hired a non-employee rather than the Claimant to fill Position 281. The claim was denied.

The Agreement provisions applicable to this case state the following, in pertinent part:

"Rule 2 - SENIORITY DATA

- (a) Employees of the Bureau covered by this Agreement, shall establish seniority on the initial roster, in accordance with their employment date.
- (b) Seniority begins at time pay starts on a position covered by this Agreement.

* * *

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

A review of the record shows that while the bulletin period had expired, the Carrier was accepting applications for Position 281 from employees located in other seniority districts. In fact, when the Claimant inquired about the position, he was invited to submit an application. The Organization argues that it was common practice on this property to go to other seniority districts for applicants if a position in a given district could not be filled. The Carrier does not dispute that. Although the Carrier states that it had discussed the position with the non-employee whom it had hired in early September, and had interviewed her on September 13, 1989, it is clear that as late as September 15, 1989, the Carrier had not made up its mind and had, at that time, actively encouraged the Claimant to file an application which the Claimant then did. Under the provisions of the Agreement the Claimant, with established seniority with the Carrier of October 11, 1988, had prior rights to the job under Rule 2 and the Board rules accordingly.

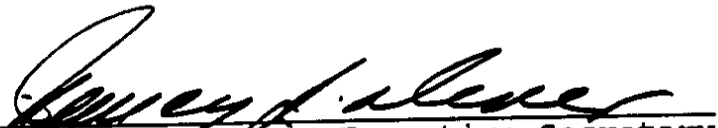
The Claimant shall be paid the difference in pay between his position and that of Position 281 until he is assigned to the latter.

In the event that the position has been abolished and/or if a senior employee displaced to Position 281 since the claim has been filed, payment to the Claimant shall be the difference in pay between his position and that of Position 281 from November 6, 1989, up to the date of abolishment and/or displacement by an employee senior to the Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.