

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29578
Docket No. MW-28837
93-3-89-3-236

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the employee (except Mr. R. L. McKee) who were awarded positions on Columbus Division Bulletin No. 11, dated March 18, 1986 and Columbus Divisions Bulletins CAT-810, TK-817, ST-1, CX-1, SE-811, TX-SX-813, UC-101, MS-2 and STO-1 dated March 17, 1986 were held off their regularly assigned positions on March 31, April 1, 2, 3 and 4, 1986 (System Docket CR-2618).

(2) As a consequence of the aforesaid violations, the employees awarded positions on the Bulletins referred to in Part (1) above, shall each be allowed forty (40) hours of pay at their respective straight time rates."

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 employe 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.

Claimants in this case were on furloughed status at the time of this dispute and have each established and hold seniority within various classifications in the Maintenance of Way Department on the Columbus Division Seniority District.

The issue in this case is whether the Carrier violated Rule 3, Section 3(d) when it allegedly failed to assign the furloughed Claimants to positions within seven days from the close of the Claimants' successful bidding for the positions in question.

The Organization contends that the Carrier did not award the Claimants the positions to which they were entitled until several days after the appropriate dates for such awards in violation of the rule cited.

The Carrier contends that it was not obligated to award the positions in question within a specific period of time and that it has the right to extend the time within which it must award positions advertised whenever it perceives an economical or efficient reason to do so. The Carrier contends that various aspects of Rule 3 and Rule 4 apply to the Carrier's responsibility in recalling and assigning furloughed employees to awarded positions and that it did not have to do so within the seven-day period that the Organization contends it should have done.

This Board has thoroughly reviewed the record in this case, and we find that the Carrier has not lived up to the requirements of Rule 3(d) because it did not start the job assignments resulting from the awards within seven days after the close of the advertisement. Therefore, the claim must be sustained.

Rule 3 states in Section 3 the following:

"(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 mean period.

(b) Advertisements will be posted on Monday or Tuesday and shall close at 5:00 P.M. on the following Monday. Advertisements will be posted at the headquarters of the gangs in the subdepartment of employees entitled to

consideration in filling the positions, during which time an employee may file his application.

(c) Bid for a new position or vacancy advertised under this Rule must be prepared on Form CT-88, and filed with the official whose name appears on the advertisement, who will detach receipt, sign, and return same to the bidder. Each furloughed employee shall be an automatic bidder for advertised positions for which he has seniority and is qualified in his working zone, including positions in divisional gangs without fixed headquarters if the gang is located therein at the close of the advertisement.

(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.

(e) An advertisement may be canceled within seven (7) days from the date advertisement is posted."

In this case, the Carrier bulletined a number of gangs, with the bids closing on March 24, 1986. The Carrier issued assignment bulletins dated March 26, 1986. However, the Claimants did not begin work on their new assignments until April 7, 1986.

As stated above, Rule 3(d) requires that awards will be made within seven days after the close of the advertisement. In Award No. 24 of Public Law Board 3781, the majority held that, "...the first paragraph in Rule 3(d) means that the job assignment resulting from the awards will start not later than seven days after the close of the advertisement." This Board can find no fault with the reasoning of Public Law Board 3781. Consequently, we will follow that ruling.

The Carrier raises the issue that the claim is invalid because the Organization did not name all of the Claimants whose rights

were allegedly violated. However, this Board finds that it was the Carrier who made the awards of the jobs, and that information was easily within its own records and knowledge. The Carrier was not prejudiced in the least with the lack of the exact names of the individuals involved being set out on the claim form.

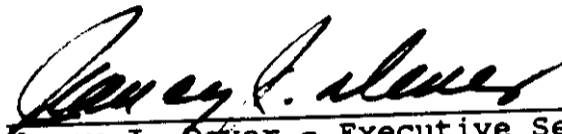
This Board recognizes that it may have been more efficient and economic for the Carrier to start the employees a week later. However, the rule requires that the employees who are awarded their bids go to work in the new job within seven days, or at least be paid for it. If the Carrier wants some flexibility for economic reasons, then it must seek its remedy at the bargaining table and not through this proceeding. Consequently, the Board has no choice but to sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION Serial No. 347

INTERPRETATION NO. 1 TO AWARD NO. 29578

DOCKET NO. MW-28837

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way
Employees

NAME OF CARRIER: Consolidated Rail Corporation

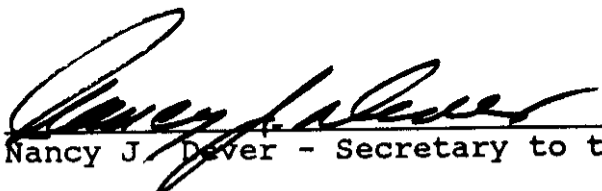
This matter having returned to the Board on the request of the employees for an interpretation, and the Board having reviewed the written arguments and listened to the oral arguments of the parties, we hereby find that the Award that was rendered by this Board on March 9, 1993, was clear and sustained the claim in its entirety as it was written by the Organization representative. This Board does not believe that there is any need for any interpretation, as the claim requested is clear and the decision sustaining the claim is just as clear.

In its response to the employees' request for an interpretation, the Carrier raises arguments which were never raised on the property. This Board did not address those arguments because they were not raised on the property, and, pursuant to Circular I, we are jurisdictionally unable to consider arguments which are raised for the first time before this Board.

This Board finds that the request for the interpretation is denied, as the original Award is clear and unambiguous.

Referee Peter R. Meyers, who sat with the Division as a neutral member when Award 29578 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 4th day of August 1993.