

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30403
Docket No. SG-30654
94-3-92-3-434

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corp. (Conrail):

- A. Please accept the following claim for loss of regular work opportunity on behalf of W. D. Stoffer, employee number 237963 when a junior employee was returned to duty in his stead.
- B. As per Rule 2-A-1 (d) of the current CRC-BRS Agreement Mr. Stoffer as a furloughed employee was an automatic bidder on the position in Gang PL-3 and should have received the Award. As a result of Conrail's indiscretion Mr. Stoffer lost thirteen (13) ten (10) hours work days at fourteen (14) dollars and thirteen (13) cents per hour, the prevailing rate of his position. In addition Mr. Stoffer lost Holiday pay for December 24 and 25, 1990, and also for December 31, 1990, and January 1, 1991, or four (4) eight hours days at the prevailing rate. (Total 162 hours at the Signalmen's rate of pay.)
- C. Due to Carrier's violation of the aforementioned Rule we request that Mr. Stoffer be paid two thousand, two hundred eighty-nine dollars and six cents (2,289.06) in penalties and that he be awarded the position of Signalmen, Gang PL-3 as full and final settlement of this claim.

Carrier File SG-334. GC File RM2016-02-691.
BRS Case No. 8624-CR"

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 employee 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.

The issue to be decided in this case is whether Claimant, as a furloughed employee, was subject to consideration as an automatic bidder under Rule 2-A-1(d) of the parties' Agreement when a position he formerly occupied was vacated by the senior employee who had displaced him from the job, when the ensuing vacancy was advertised in Bulletin No. 15-65, dated November 14, 1990. Rule 2-A-1(d) reads as follows:

"(d) Awards will be made within ten (10) calendar days after the close of the advertisement period to the senior bidder in the class. If there are no bids from employees who possess seniority in the class, Rule 3-B-2 will govern. Assignment to the position will be made within ten (10) calendar days following the date the position is awarded. Notice of awards will be posted at the headquarters involved. A furloughed employee will be considered as having bid for any position or vacancy not requiring a change in residence. If he is the senior bidder in the class, the position will be awarded to him. If such employee fails to report for the position, within ten (10) calendar days, he shall forfeit his seniority in that class and all higher classes, unless such position is expected to be of less than ninety (90) calendar days duration.

If a Maintainer or Signalman position cannot be filled under the preceding paragraph it shall be filled by a qualified Trainee, Assistant Maintainer or Assistant Signalman.

If a position cannot be filled in accordance with the previous paragraph the junior employee in the class in which the vacancy exists who is working in a lower class shall be required to accept the position provided it does not require a change in residence. Failure to accept the position will result in the forfeiture of all seniority in the class in which the position was vacant.

NOTE: The following definition of "change in residence" in Section 501(9) of the RRR Act is applicable:

"change in residence" means transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location."

The determinative sentence in the above states that "[a] furloughed employee will be considered as having bid for any position or vacancy not requiring a change in residence." "Change in residence" is defined in the Note to the Rule. Further, "change in residence" has been the subject of discussions between the Organization and Carrier that were memorialized in a letter, dated July 14, 1989, stating:

"This refers to our discussion of July 11, 1989, regarding the determination of 'work location' and 'residence' in applying change of residence under the NOTE to Rule 2-A-1.

Based on the provisions of the February 10, 1976 Implementing Agreement and the Single Collective Bargaining Agreement of September 1, 1981, for employees hired on or before April 1, 1976, the work location and residence as of April 1, 1976, applies. For employees hired after April 1, 1976, the work location and residence as of such hire date applies."

Claimant lived and worked in Wooster, Ohio, prior to April 1, 1976. Thus, under the parties' agreed to definition, Wooster was the employee's "work location" and it was also his "residence" for purposes of Rule 2-A-1(d). The vacancy that was posted in Bulletin No. 15-65 was in East Palestine, Ohio. East Palestine and Wooster are in excess of thirty miles apart. Accordingly, Claimant could not, by the literal reading of the Rule, be considered as having bid on the position covered by Bulletin No. 15-65, because in his case it was not one "not requiring a change in residence."

The Organization stressed that Claimant had worked the job and had been displaced by the incumbent who left causing Bulletin No. 15-65 to be issued. Study of the Agreement discloses no language covering this contingency. Instead, the language is specific as to what existing conditions generate an automatic bid by a furloughed employee. It is these conditions that are relevant and important, and not the work history, or the last job occupied by a furloughed employee, that dictate the correct application of the Rule.

The Claim will be denied because of lack of Rule support.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 8th day of August 1994.