

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30605
Docket No. MW-30262
94-3-91-3-731

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation
((Amtrak)

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

- (1.) The Agreement was violated when the Carrier improperly advertised a contractor protection position as a bridge inspector position and awarded the position to Mr. J. Lamicella instead of Mr. J. Jacobsen. (System File NEC-BMWE-SD-2809 AMT).
- (2.) As a consequence of the aforesaid violation, Mr. J. Jacobsen shall "...be paid eight (8) hrs. each day, beginning the first day that he, Mr. Lamicella, actually worked, June 15th, and continuing until this situation is rectified. In addition, we also are requesting that the claimant be paid the overtime that he missed as a result of his not being awarded the position in question...."

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 were given due notice of hearing thereon.

The incident precipitating this dispute was assignment by Carrier of J. Lamicella to a B&B Inspector position bulletined on Advertisement No. 020-NYB-0690, effective July 2, 1990. By letter dated August 8, 1990, the Organization filed a claim alleging violation of the Scope Rule A, 1, Rule 55 and Letter (e) of the Agreement between the Parties. The claim was denied on August 25, 1990 and was subsequently appealed in the usual manner.

At the outset, the Carrier protested that the claim "differs materially" from the claim presented on the property and should, therefore, be dismissed. After reading through the lengthy and rather convoluted correspondence between the Parties, the Board does not find that the changes made in this claim constitute a fatal procedural flaw. Nor does the claim lack specificity with respect to the nature of the violation alleged.

With respect to the merits of the case, however, the Organization has not sustained its burden of persuasion. The Organization alleged that Carrier intentionally misrepresented the position at issue in the advertisement: that it encompassed duties reserved by the Agreement to Track Subdepartment employees. There is no showing on this record that Carrier's advertisement of this position was a ruse for awarding Track Subdepartment work to a B&B Subdepartment employee. Nor has the Organization established that the work at issue is reserved to Track Subdepartment employees either by clear contract language or by long-standing system wide custom and practice. (See, Third Division Award 26236) Accordingly, the Board finds no basis for sustaining this claim.

AWARD

Claim denied.

ORDER

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 2nd day of December 1994.