

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32391
Docket No. MS-32324
97-3-95-3-159

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Andrew J. McGraw

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Petitioner McGraw filed a monetary claim with employer ConRail under the TCU Agreement for wages he should have received when ConRail awarded two positions in violation of the Agreement, precluding McGraw, the most senior available furloughed member from bidding for the position. Consequently, McGraw remained without any employ and without means of support.

Had the Carrier followed the proper procedure in advertising the positions, Petitioner would have had opportunity to bid and would have been a successful bidder because of his seniority date, and would have been awarded the positions as the most senior bidder, entitling him to the highest wage available.

Petitioner originally claimed entitlement to the highest of those positions. However, since the July 15, 1992 filing of this claim, Petitioner was accepted as a Train Dispatcher and therefore claims only the monetary wages due him. Petitioner is entitled to eight (8) hours of the highest paid position (\$14.485 per hour) bulletined for that position for five (5) days per week for each week since June 1, 1992 until employee returned to work for the Carrier as a Train Dispatcher in February of 1993. Petitioner further claims and is entitled to the difference in the pay he earned as a Train Dispatcher, if there is such a difference.”

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 Claimant in this dispute was in a voluntary furloughed status at the time in 1992 when two positions covered by the Agreement were bulletined as permanent vacancies because of the announced retirement of the incumbents. Claimant did not submit a bid for either of the bulletined positions. Claimant acknowledged in the on-property correspondence that he had prior knowledge of the impending announced retirements of the incumbents of the positions.

The penalty claim as here presented was initiated by the Claimant on his own behalf with copy thereof to the Organization. During the subsequent on-property progression of the dispute through the normal grievance procedures, the claim was handled at various stages of progression by both the Claimant and the Organization on behalf of the Claimant. The voluminous on-property case file contains copies of the various correspondence which passed between the various Carrier Officers and the Claimant, as well as between the Carrier officers and the Organization Representatives. There is nothing in the on-property case record which indicates or implies that the Organization was not acting on behalf of the Claimant in the progression of this dispute, nor that the Claimant at any time indicated that he did not want the Organization to act on his behalf. Rather, the case record reflects that the Organization accorded the Claimant all of the due process claim and appeal rights on the property to which he was entitled under the terms and conditions of the negotiated Rules Agreement. Because the Claimant was not in agreement with the Organization's ultimate conclusions in regard to this dispute, he, on his own behalf, initiated the presentation of the dispute to this

Board. At the Board Hearing of this case, Claimant was not only represented by private counsel, but also personally appeared and testified on his own behalf.

This Board admittedly does not have jurisdiction to resolve disputes between an individual employee and his Organization. Rather, the Board is empowered only to interpret the language, terms and conditions of collective bargaining agreements which are negotiated between the Organization and the Carrier. This interpretive power goes also to the consideration and application of the customs, practices and traditions which are acquiesced in and acknowledged by and between the Organization and the Carrier.

In this case, there is no evidence or testimony to suggest or imply that the Organization was not in agreement with the Carrier's application of the negotiated Rule provisions as they were applied here. On the contrary, the case record contains substantial evidence that the Organization and the Carrier at all times pertinent to this dispute were in consonance one with the other relative to the fact situation which existed, as well as the resolution of the events. In addition, the Board is convinced, after studying all of the evidence and considering the language of the applicable Rules, that there is no prohibition to be found in the Rules Agreement against Carrier's bulletining of the permanent vacancies as was done in this case. The Board, therefore, has no basis on which to make a finding of a violation of the applicable Agreement Rules and the claim as here presented is denied in its entirety.

The Claimant's additional demand in the ex-parte Submission to this Board for "Consequential Damages" was not a part of the on-property handling of this dispute and is not only improperly before the Board, but also is not, in any event, a proper matter for consideration by this Section 3, RLA Board of Adjustment.

This entire claim is denied for lack of rule support.

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 30th day of December 1997.