

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35864
Docket No. MS-33280
01-3-96-3-758

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(George J. Cherepanik
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM:

"I am currently involved in a dispute with the Carrier (New Jersey Transit Rail Operations), regarding the awarding of a higher position (Inspector) to a junior employee, M. Berko. This action is a flagrant violation of the Agreement between the Brotherhood of Railroad Signalmen and New Jersey Transit Rail Operations that existed during the time of the awarded position.

I charged the Carrier with violating Rule #2-A-1 (d), Rule #3-B-2 (a) and Rule #15 of the aforementioned Agreement.

As the senior bidder for the position of Inspector, "Group 1", the award should have been to me. The Carrier has tactfully tried to change the subject from rule violations to qualifications.

I am seeking as the remedy the same date for the Inspector position as M. Berko, September 28, 1991 because of this dispute."

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.

On September 14, 1994, the Carrier bulletined the position of Inspector, Symbol No. C-235. Thereafter applications were received from 16 individuals, including the Claimant and M. Berko. The Carrier thereupon determined that there were no qualified bidders and on September 28, 1994 bulletined the position again. Subsequently, the applicants were scheduled for testing and interviews. However, the Claimant neither took the test nor appeared for the interview. Moreover, of the remaining 15 applicants only ten participated in the testing and interviewing process and the position was subsequently awarded to M. Berko, the most senior applicant of those who took part in the testing and interview process.

There is no question, nor is the claim made herein, that the Carrier has the right to make a determination whether bidders for a position have established their qualifications for a bulletined position. In addition, a review of the governing contractual provisions involved in this dispute clearly shows that once the Carrier has determined that there are no qualified bidders to whom a position must be awarded, it may test and interview to determine which of the remaining bidders is entitled to the position in question. In the instant matter the Carrier did just that. Moreover, the Claimant effectively removed himself from consideration when he did not participate in the testing and interviewing process.

Finally, the Claimant had no claim to the position in question because he had no seniority as an Inspector and he may not claim any seniority in that higher classification merely because he possessed seniority in a lower classification.

AWARD

Claim denied.

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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 18th day of December, 2001.