

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35865
Docket No. MS-33284
01-3-96-3-781**

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

(Richey Barksdale

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM:

“I am currently involved in a dispute with the above name carrier 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 I”, 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 and the recovery of all monetary losses that have resulted 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. Only ten of the applicants, including the Claimant, participated in the testing and interviewing process. The Claimant did not attain a passing score and the position was subsequently awarded to M. Berko, the most senior applicant with the highest score among the applicants.

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 and the Claimant removed himself from consideration when he did not attain a passing score.

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 18th day of December, 2001.