

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37343
Docket No. SG-37460
05-3-02-3-456

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of K. L. Brown, for the differential in pay between the amount the Claimant has earned starting June 3, 2001, and a Lead Signal Maintainer continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 6, 7, 16, 17, and 46 through 50, when it failed to advertise and properly award the vacant Lead Signal Maintainer position on Seniority District No. 6 to the Claimant, the Claimant should also be placed on the System Seniority Roster and the Mobile District Roster with a Class 2 and a Class 1 date of May 13, 2001. Carrier’s File No. 15(01-0133). General Chairman’s File No. 01-137-9. BRS File Case No. 12030-L&N.”

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 Organization filed the instant claim on behalf of Signal Maintainer K. L. Brown alleging that the Carrier violated the Agreement when it failed to properly advertise and/or abolish the temporary Lead Maintainer position on District Signal Gang 7M24, on Seniority District No. 6, that was vacated by E. J. Ward.

The Organization argues that the Agreement Rules require the Carrier to advertise or abolish a vacated position within five days, but it failed to do so in this case. The Organization emphasizes that although the Carrier indicated that it is aware that this is a violation of the Agreement, its policy is that no position can be advertised or abolished until that request is made by the local supervisor.

The Organization asserts that on several occasions the Claimant requested that this position be advertised, so that he could gain seniority in the next higher class, which is Class Number 3, Lead Signalman/Signal Maintainer. The Claimant was the senior employee interested in bidding this position. The Organization points out, however, that due to the Carrier's failure to advertise the position, a junior employee was allowed to go around the Claimant, while working construction. The Organization emphasizes that the Claimant bid on the position when it finally was advertised on the district.

The Carrier initially contends that the claim presented to the Board is not the same as the one originally filed on the property. The Organization amended its statement of claim. The Carrier asserts that the Board long has held that it is a fatal defect to amend a claim during its progression, and the Board has dismissed claims upon that determination alone. Moreover, the original version of the instant claim is important because the Organization recognized the Carrier's option to discontinue that assignment.

The Carrier also points out that the instant claim is a duplicate of the claim covered by Third Division Award 37341, which involves the same party and the same issue over the same position, differing only as to the name of the Claimant. The Carrier maintains that the Organization apparently is progressing two claims in the hopes of

collecting dual penalty payments for two different employees. Because these are duplicate claims, the instant claim should be dismissed.

As for the merits of this dispute, the Carrier points out that there is no dispute that a 7M24-360 Lead Signal Maintainer position was advertised on numerous occasions during 2001, and the Claimant submitted a bid for the position. The position, however, was awarded to senior bidder K. E. Smith. The Carrier argues that the Claimant's failure to secure the bulletined position is sufficient reason to dismiss this claim. The Carrier cannot be held responsible for the Claimant's lesser seniority. The Carrier further asserts that it had the managerial right not to fill the position when it became vacant, and to discontinue the position if it was not needed. The Carrier has the unfettered right to stop work on any assignment and abolish it; there is no evidence that the duties of the vacant position were performed by anyone. The Carrier points out that the blanking of a vacant assignment does not provide either the Claimant or J. L. Blackwood (the other Claimant) with an opportunity to make claims for a windfall payment.

The Carrier asserts that the instant claim essentially is a request for injunctive relief. The Organization wrongfully requests the Board to grant injunctive relief by insisting that the Carrier should have issued an earlier advertisement bulletin for a Lead Signal Maintainer position. The Carrier maintains that such requests are beyond the scope of the Board's authority, and similar requests previously have been denied. The Carrier contends that it advertised sufficient Lead Signal Maintainer positions to accomplish the covered work, and every employee, including the Claimant, was given an opportunity to bid on the advertised position. The Carrier argues that it complied with the Agreement and retained its managerial right to determine the size of its workforce.

The Carrier emphasizes that there is no contractual support to uphold the Organization's assertions in this matter, particularly because the Organization overlooked the fact that the job subsequently was awarded to a senior employee. The Organization failed to support its request for compensation with evidence and contractual support, and the Board should not attempt to speculate on the facts. The Carrier asserts that in view of the Organization's failure of proof, the Board should dismiss the instant claim as based on speculation and conjecture. The Carrier points out that there is no evidence that the Claimant suffered any compensation loss and is entitled to additional compensation. The Claimant is fully employed at another location, and he is seeking a windfall payment through arbitral fiat.

The Board reviewed the procedural arguments raised by the Carrier and concludes that given the following determination, we need not rule on those issues.

The Board finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it allegedly failed to advertise and properly award the vacant Lead Signal Maintainer position on Seniority District No. 6 to the Claimant. The record reveals that the Carrier advertised sufficient Lead Signal Maintainer positions to accomplish the work that it needed to be done. The Claimant, as well as other employees, was given the opportunity to place his bid on the advertised position. The Carrier has the managerial right to decide how many positions it needs and also when to advertise or abolish a position. There is nothing in this record that shows a violation of the Agreement by the Carrier.

Moreover, the record reveals that the job at issue was subsequently awarded to a senior employee. The burden of proof is on the Organization in this case, and it failed to establish the facts necessary to support its position. Moreover, there was no showing that the Claimant lost any compensation as a result of the action of the Carrier. The Claimant continues to be fully employed at another location.

For all of the above reasons, the claim must be denied.

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 19th day of January 2005.