

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 24

Case No. 24

System Docket No. BMW-G-169

STATEMENT OF CLAIM

Claim as to violation of Agreement in reference to posting a position for bid as a "Carman/Carpenter" at Rensselaer, NY.

FINDINGS

The Organization's position, as stated in its initial claim letter, is as follows:

This is a protest on behalf of B&B Mechanics in the Empire (Albany) Seniority District for the Carrier's violation of the current agreement between the BMW(Corp) and Amtrak, specifically, but not limited to the Scope Rule, Rules "D" and "E". This violation occurred when the Facilities Manager in Rensselaer, NY posted a position for bid as a "Carman/Carpenter". The position he was advertising had for years been held by an employee with seniority coming under our agreement, D. Lynch. Upon his retirement the position was awarded to J.E. Stiles who subsequently left the position. When the position went "No Bid" by the B&B Department, the Manager then posted and awarded the current job.

The work involved in this position is work customarily performed by employees represented by the BMW. The positions they bid upon are all posted and distributed by J.S. Collins in Philadelphia not the Facility Manager and the seniority they accumulate is on the B&B roster.

I request that the "Carpenter" position be reposted for the B&B Department as required by our agreement.

The Joint Council of Carman is a third party at interest and was notified of the Board's hearing. In response, the Council stated:

For the record the BMW Union does not have exclusivity to the type of work described in the duties performed by the employee assigned to the position in question.

The Council also requested additional time for preparation of a submission. In view of the Board's conclusion herein, the Board determines there is no purpose served in requiring such a submission.

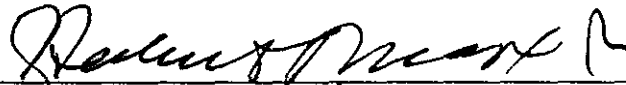
As the Board sees it, the difficulty here is that the Organization is protesting the posting and filling of a position, simply based on its perceived background of the position and its previous incumbents. However, there can be no finding that the posting of a Carman/Carpenter position, in and of itself, is improper. There is no showing that carpenter work is not regularly performed by various crafts, including Carman and Maintenance of Way forces.

What may be at issue is the particular tasks assigned to the occupant of the Carman/Carpenter position. These are not raised in the claim here under review. Only if the Carman/Carpenter is shown

to be performing work which is claimed to belong exclusively to Maintenance of Way forces would it be possible to resolve the matter. The posting of the position may serve to alert the Carrier to the Organization's contention as to duty assignments; by itself, however, there is no agreement support for the claim.

A W A R D

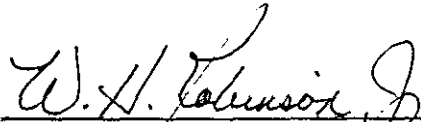
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 9-21-93