

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Articles 8, 9, 10, 22 and 37 of the Agreement when it awarded junior employee J. G. Cureton the foreman position advertised March 5, 2008 under BIDS-J-2008 instead of senior employee Alex W. Kelly.
2. As a consequence of the violation referred to in Part 1 above, Mr. Kelly shall be reimbursed \$788.48 for mileage and compensated \$2,142.36 for lost wages as part of this continuing claim. (Carrier File MW-08-05)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Resolution of the dispute centers around a determination as to the meaning and application of certain provisions of Article 8, "Filling Vacant Positions," of the current Agreement where, in particular, it states:

Employees will submit bids for vacant positions to the Engineering Department Headquarters office in North Billerica, or their supervisor, on a form provided by the Carrier and must assure that such bids are received, by the closing date specified on the job advertisement. (Emphasis Added by the Board.)

On March 5, 2008 the Carrier issued BIDS-J-2008 in advertising several positions, including that of Foreman for Maintenance Crew 3541 with headquarters at Rumford, Maine. Claimant reportedly attempted to submit a bid for this Foreman's position via fax on March 7, 2008, but maintains that due to a problem with the fax transmittal he presented his signed bid on that same date to his immediate supervisor. It is unquestioned that the supervisor acknowledged receipt

of Claimant's bid by placing his signature on the form and showing it as having being received by him on March 7, 2008.

The positions advertised on BIDS-J-2008 were awarded on March 14, 2008, with the position of Foreman for Maintenance Crew 3541 being awarded to an employee who undisputedly was junior in seniority to Claimant.

Under date of April 14, 2008 the Organization filed the instant claim on behalf of Claimant for his assignment to the aforementioned Foreman's position as the senior bidder, with compensation for time lost as set forth in the above Statement of Claim.

It is the position of the Organization that the aforementioned provisions of Article 8 are clear and unambiguous in providing two options for an employee to submit a bid for a vacant or bulletined position, namely, to the Engineering Department Headquarters or to their supervisor. In this respect, the Organization submits there is no question that Claimant submitted a bid for the Foreman's position at issue on a form as provided by the Carrier to his immediate supervisor prior to the closing date specified on the job advertisement. Further, the Organization argues Claimant did assure that his bid for the advertised position was received, as it says is evidenced by his supervisor having signed and dated the bid form.

The Carrier maintains the claim is totally without merit and that the Foreman's position at issue was awarded in full compliance with Article 8. It says that while Article 8 permits two methods to submit a bid, the agreement language must be read in the light of it going on to state, "and must assure that such bids are received by the closing date specified on the job advertisement." This modifying and cautionary caveat, the Carrier emphatically states, places the ultimate responsibility on the employee to assure that a bid as submitted was in fact received by the personnel officer in the Engineering Department in North Billerica.

In overall study of the record, there is no question that the Claimant clearly acted in good faith in first attempting to place his bid for the Foreman's position by fax, and not being satisfied that the fax went through, giving the bid form to his supervisor to sign and date, and offering that the supervisor had told him that he "did call North Billerica regarding his bid for the Foreman position."

While the Board is sympathetic to the Claimant because the system appears to have failed him in his bid for the Foreman's position, under the fundamental rules for interpreting agreement language we must give effect to all of its provisions if same can be done in a consistent and common sense manner. In the case at hand, to give recognition to only that provision of the contract language in dispute which provides an option for submitting a bid form, and not to give consideration to the remainder of the agreement language at issue would leave meaningless the intent of that

provision which states, "and must assure that such bid is received, by the closing date of the job advertisement."

To "assure" is to insure or make certain of the attainment of something. While the agreement language at issue clearly permits a bid form be given to a supervisor, it must be recognized that a supervisor is nothing more than an intermediary in the bidding process. An employee does not assure that a bid has reached its final destination by the handing of a bid form to a supervisor. An assurance that the bid form has reached its ultimate destination for consideration must be obtained from the person having direct responsibility for the receipt, consideration, and awarding of positions as advertised on the job bulletin, or, namely, the personnel officer in the Engineering Department in North Billerica.

Unfortunately, the language at issue does not make this matter of assurance entirely clear, and it well may be that Claimant was of a mistaken belief that by giving the bid form to his supervisor this action alone satisfied those provisions of Article 8 which state, "and must assure such bid was received, by the closing date of the job advertisement." Although a strong argument by or on behalf of Claimant, it is also undermined in a failure to have obtained and submitted a verified statement from the supervisor as to what action he had in fact taken involving his handling of Claimant's bid form. To merely assert that the supervisor told the Claimant he had "called" North Billerica "regarding his bid," must be viewed as inadmissible hearsay.

In the particular circumstances of record, the claim will be denied. The Board will, however, recommend that the parties meet jointly in conference to consider issuance of a directive to employees in clarification of the aforementioned agreement language from Article 8 in the filing of a bid for an advertised position.

AWARD:

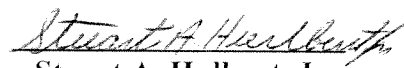
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated April 12, 2010