

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 8
)
) Award No. 18
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed and refused to bulletin and assign R. L. Payne to a Group 3 Class (e) Carpenter Truck Operator's position on B&B Gang 6216 at Nampa, Idaho beginning November 25, 1996 (System File N-348/1045323).
- 2 As a consequence of the violation referred to in Part (1) above:
 - (a) The Carrier must bulletin immediately a Group 3 Class (e) Carpenter Truck Operator position in connection with the operation of Truck MW 1916-67562 on B&B Gang 6216.
 - (b) The Carrier must compensate Claimant Payne thirty one cents (\$.31) for each of the extra ninety four (94) miles he is required to drive each day service is performed starting on November 25, 1996, continuing until the Carpenter Truck Operator position is correctly assigned by bulletin.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The merits of the instant claim are governed by our award in Case No. 3, Award No. 17. As in Case no. 3, Award No. 17, Carrier has challenged the timeliness of the claim and the

Organization has maintained that the claim is a continuing one. The timeliness issue requires some elaboration.

As in Case No. 3, the claim involves a failure to bulletin the position which is continuing in nature. However, whereas the claim in Case No. 3 involved a failure to pay the employee performing the duties of the position at the Carpenter Truck Operator rate, the instant claim involves the failure to assign the Claimant to the position. Although in some circumstances, the failure to assign a claimant to a position may be a discrete act, in the instant case, the failure to assign the Claimant is a direct result of the failure to bulletin the position. That is, by failing to bulletin the position, Carrier failed to give Claimant an opportunity to bid on the position. The Organization, without contradiction by Carrier, maintains that if the position had been bulletined, Claimant would have been the senior qualified bidder and would have received the assignment. Thus, the failure to assign claim is inherently linked to the failure to bulletin claim and must also be considered to be continuing in nature.¹ Therefore, in accordance with Award No. 17, the claim will be sustained.

AWARD

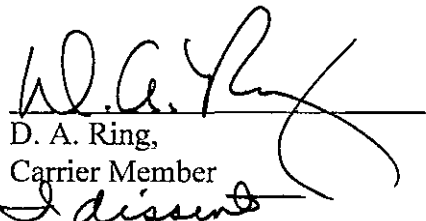
Claim sustained.

ORDER

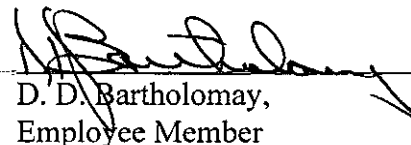
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

I dissent
Dated at Chicago, Illinois, January 29, 2001.

¹We again note that the issue of laches was not raised and we do not consider it in this case.