

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 120

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it failed to properly post Bulletin No. DPG-87 at the Montpelier, Indiana, Section Headquarters for the prescribed period of time. (File MW-FTW-98-06-SG-30)
2. As a result of the violation, Mr. J. Harris shall be awarded a position of No. 1 TKO Operator; No. 2 Spiker Operator or No. 3 Backup Tamper Operator in accordance with his established seniority in the preferential order listed on his submitted bid and he shall be paid for all monetary loss suffered as a result of the Carrier's failure to properly award him the aforementioned position on the TS-26 Gang. The Carrier shall abolish Bulletin No. DPG-87, dated October 31, 1997, and readvertise said bulletin in accordance with the provisions of the Agreement.

FINDINGS:

On February 19, 1998, the Organization submitted a claim on behalf of Claimant J. Harris, contending that the Carrier violated the parties' agreement dated February 1, 1951, when it failed to properly post bulletins for the prescribed duration of time as described in Rule 14-(B); specifically, the Carrier failed to post Bulletin No. DPG-87, dated October 31, 1997, for the required ten days at the Montpelier, Indiana, Section Headquarters, where the Claimant was headquartered at the time of this claim, resulting in the Claimant's bid on a position on Tie Gang TS-26, a Designated Programmed Gang, to be disallowed.

The Organization argues that because the assigned foreman at Montpelier was on vacation at the time the bulletins were sent out by the Carrier to various locations, the bulletin in

question, Bulletin No. DPG-87, dated October 31, 1997, was not posted in a timely manner. The Organization argues that the bulletin was posted when the foreman returned from vacation, on or about November 14, 1997, shortly before the expiration of the bulletining period; and when the Claimant finally became aware of Bulletin No. DPG-87 on November 18, 1997, he contacted the Carrier and notified it that he had not seen the bulletin and was instructed to immediately forward a bid to the Carrier. The Claimant complied with the Carrier's instructions, but the Carrier disallowed the Claimant's bid and failed to consider him for the position on which he made application. As a result, the Organization contends that because Bulletin No. DPG-87 was not properly posted for the prescribed duration of time, the Carrier denied the Claimant the opportunity to exercise his established seniority in accordance with the provisions of the parties' effective working agreement.

The Carrier contends that it did not improperly post Bulletin No. DPG-87 and that it was handled in accordance with the applicable rules and practice. The Claimant was provided an opportunity to make application on the bulletin, but failed to do so in a timely manner. The Carrier also argues that since this matter concerns the awarding of DPG positions, Bulletin No. DPG-87 is governed by Section 2 of the parties' June 12, 1992, Arbitrated Agreement and not Rule 14-(B). Under this rule, the bulletining period is fifteen days, not ten, and the awarding of assignments occurs fifteen days after the close of the bulletin. The bid expiration period was November 15, 1997. The assigned foreman returned from vacation on November 13, 1997, and posted the bulletin prior to the expiration of the bid period. The Carrier further argues that it received a call from the Claimant on November 18, 1997, and told the Claimant that his bid would still be considered if he submitted it immediately. The Carrier contends that it did not

receive the Claimant's bid until December 1, 1997, and the assignments to the TS-26 Tie Gang had already been made. Hence, the Carrier contends that no rule was violated, that the Organization's claim is not supported by the rules of the current agreement, and that the Claimant had sufficient opportunity to submit his bid on Bulletin No. DPG-87, both during the regular bid period and after he contacted the Carrier.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Organization has failed to prove with sufficient evidence that the Claimant's rights were violated because the Carrier did not properly post Bulletin No. DPG-87. Therefore, the claim must be denied.

The record does reveal that because the assigned foreman was on vacation at the time, the bulletin may have not been posted promptly. However, when the Claimant contacted the Carrier and informed the Carrier that he wanted to bid on the positions, the Carrier gave him some additional time to mail it in. The Claimant had contacted the Carrier after the bidding period was over. The bidding period expired on November 15, 1997, and the Claimant called the Carrier on November 18, 1997. The record reveals that the Carrier did not receive the Claimant's bid until December 1, 1997, after the assignments had already been made.

It is true that it was not proper that the bulletin was not posted on a timely basis. However, the Claimant was given additional time to get his bid in and he did not immediately telefax the bid, nor did he send the bid in overnight mail. By the time the bid made it into the Carrier's office, the assignments had already been made pursuant to the bulletin.

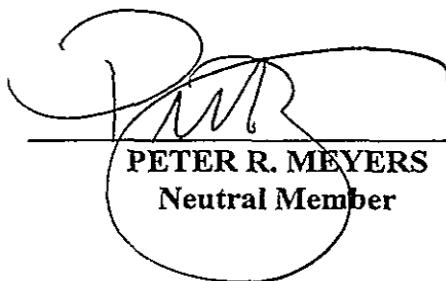
Although the Board understands the frustration of the Claimant because of the late

posting of the bulletin, the agreement does not allow for a remedy of abolishing the bulletin and re-advertising it once the positions have already been assigned to the employees. Those employees complied with the rules and filed their bids within the required time period. The Claimant delayed and, therefore, was not selected.

A full review of this record makes it clear that the Carrier did not violate the agreement by its actions in November of 1997. Therefore, this Board has no choice but to deny the claim.

AWARD:

The claim is denied.

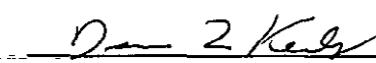


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 2-15-00



CARRIER MEMBER

DATED: 2/15/00