

Award No. 11

Docket MW-1091

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Illinois Central Gulf Railroad

Statement of Claim

1. The Carrier violated the Agreement when it failed to properly bulletin the position of Foreman on Gang No. 8 and therefore.
2. Senior Trackman Willie Gordon be allowed the difference between what he was paid at the Trackman's rate and what he would have been paid at the Trackman's rate and what he would have been paid at the Foreman's rate absent the violation referred to within Part (1) of this claim.

Findings

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated August 10, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Division Engineer, on November 23, 1976, posted a bulletin advertising the position of a Section Foreman headquartered at Monroe, Louisiana. Said bid was closed ten days thereafter. A bulletin was posted December 8, 1976, awarding the Section Foreman position to T. L. Barker. Immediately thereafter Claimant protested the assignment of a junior employee. The Employee Representative advised the Division Engineer that the bulletin had been improperly posted and requested that the position be rebulletined to permit all interested employees an opportunity to make application therefor. He failed to recognize and to carry out such request.

The thrust of the Division Engineer's reluctance to re-advertise the Section Foreman's position was predicated on the basis of the complaint registered to wit - that he, personally, had received no complaint of protest thereon. He replied to the General Chairman in part as follows:

"If there are men protesting the award of this job who are senior to Mr. Barker, have them submit their protest to me in writing and I will give their protest every consideration."

Rule 14 (a) reads:

"Bulletin notice covering new positions or vacancies will be posted for a period of ten days at the headquarters of the gangs in the sub-department of the employees entitled to consideration in filling the positions, during which time the employees may file their applications with the office, whose name appears on the bulletin...."

The record reflects that the Division Engineer was advised, both in writing and orally, by the Local Chairman, that three different trackmen, at three different times, had claimed that they had seen no bulletin. They further alleged that they were not aware of who the Section Foreman was after P. Jackson resigned from the foreman position he had bid in, on September 22, 1976. In that connection it was also charged that the bulletin rule was further not being complied with because of the alleged fact that Division representatives were keeping that particular Foreman position open awaiting the return of Mr. T. L. Barker who was away at training school for foremen.

The Board finds that it is neither lawfully proper, nor contractually correct or for that matter, was it conducive to sound labor relations, for the Division Engineer to attempt to have protestant employees handle their grievance personally with the Division Engineer after such matter had been placed in the hands of their Employee Representative to handle. While it may have not been so intended, the Division Engineer gave the appearance as if he were refusing to meet and decide the grievance in question. In any event he did nothing about it. Despite the Division Engineers failure to re-advertise the Foreman's position in question, such position was re-advertised when the request was appealed to a higher level.

While the Board passes no judgment on the allegation of nepotism because of the lack of proof, the instant claim is directed solely towards a monetary,

and not a seniority resolution.

The Board in the circumstances will sustain the claim.

Award Claim sustained.

Order Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

John Palloni  
John Palloni, Employee Member

M. J. Hagen  
M. J. Hagen, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, April 21, 1979.