

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 189

Award No. 189

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

-and-

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim on behalf of Mr. G. F. McGuire for ten (10) hours' pay account not being allowed to work on April 3, 1995.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

For the most part, the material facts that led to this claim are not in dispute. On March 10, 1995, the Carrier advertised the position of Machine Operator-2, Yard Cleaner, at Hollidaysburg, Pennsylvania. The position was advertised pursuant to Rule 3, Selection of Positions. On March 31, 1995, an announcement was posted awarding the position to the Claimant, G. F. McGuire. The award was effective April 10, 1995.

The Claimant was awarded the position of Machine Operator-2, Yard Cleaner, in error since he was not qualified for this position. On March 31, 1995, the Carrier issued a corrected announcement advising that this position was awarded to employee A. H. Dibosky and that it would be effective April 3, 1995.

On Monday, April 3, 1995, the Claimant reported for the Yard Cleaner position at Hollidaysburg and was informed that he had been awarded the position in error since he was not qualified for it. He therefore requested vacation pay for the day. It should be noted that this job worked 10 hours on April 3, 1995.


The Organization filed a claim on behalf of the Claimant for the earnings he lost when he was not allowed to work on April 3, 1995. It is the Organization's contention that the Carrier had three days to notify the Claimant that he had been awarded the position in error yet it made no attempt to contact him.

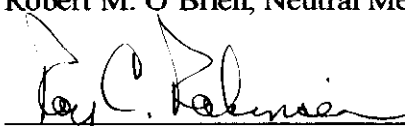
The Carrier denied the claim contending that the revised announcement was posted on March 31, 1995, the same day on which the erroneous announcement was posted. The revised announcement was properly posted pursuant to Rule 3, according to the Carrier, and therefore there is no basis for the compensation requested by the Claimant.

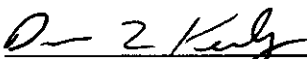
There is no question that the Claimant was not qualified for the position he had been awarded in error on March 31, 1995. At issue is whether the Carrier was obligated to notify him of this error before he reported for the Machine Operator-2, Yard Cleaner job, on April 3, 1995. Under the circumstances of this case, the Carrier was not required to personally notify the Claimant of the error, in this Board's opinion.

It is noteworthy that the revised announcement was posted on the same day as the erroneous announcement. There is no evidence that the Carrier timed the revised announcement to mislead the Claimant. Since the Claimant observed the original announcement he just as easily could have observed the revised announcement. Moreover, it is unclear why the Claimant reported for the Yard Cleaner job on April 3, 1995, since the original notice stated that the award was effective April 10, 1995. And in any case, the Carrier posted the revised announcement in accordance with the provisions of Rule 3 and the claim must be denied as a result.

AWARD: Claim denied.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02