

Award No. 16
Case No. 17

SPECIAL BOARD OF ADJUSTMENT NO. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations Inc.

STATEMENT
OF
CLAIM:

Carrier violated the applicable Agreement, particularly Rule 3, Section 3(a) when on April 9, 1984 it posted defective Bulletin Nos. 58 through 61. The Carrier shall revoke and readvertise these and any other like bulletins found defective from this continuing violation of Rule 3 Section 3(a) and Rule 18.

FINDINGS:

Rule 3 Section 3(a) reads as follows:

All positions and vacancies (except vacations) anticipated to be more than thirty (30) days duration will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

That the bulletins in question correctly show position title, rate of pay, headquarters, tour of duty and rest days is not challenged. It is Petitioner's position that they are defective in other respects; particularly in not setting forth meal hours, describing the specific duties of each position bulletined and imposing discriminatory requirements.

With respect to the meal provision, Petitioner points out that Rule 18 Section 1(a) contains the following provisions:

"(a) Except as provided in paragraphs (d) and (e) of this Rule, the meal period shall be thirty (30) minutes which shall be during the fifth or sixth hour after the advertised starting time. A shorter or longer meal period may be established by agreement between the Agency's designated official and General Chairman."

(b) If the meal period is not afforded within the time limit specified in paragraph (a) of this Section and is worked, it will be paid for at straight time rate and twenty (20) minutes allowed for lunch at the first opportunity without loss of pay."

Each of the disputed Bulletins reads as follows as to meals:

"Meal Period: 1/2 hour."

Carrier maintains that when considered together with Rule 18 Section 1(a) and (b), that "1/2 hour" reference should be sufficient.

The requirement that the meal "shall be during the fifth or sixth hour after the advertised starting time" is a reasonable and, in light of the demands and nature of the business, a realistic provision. It would appear, in the absence of additional evidence that is not before us, to reflect the interests of employees as well as management.

Similarly, we find no persuasive basis for holding that description of duties of each position bulletined is defective within the meaning of the Rule. It is in the interests of applicants that they be apprised of what the position they seek entails. Rule 1's list of seniority classes merely defines the primary duties of each class and not the duties of the bulletined position.

Bulletin 58 states that the Title of the Position is B & B Mechanic and the Job Description in that Bulletin makes clear that the specific work involved calls for the performance of painter duties and knowledge.

Bulletin 59 indicates that the Title is Structural Welder and it states that the applicant must be conversant with all types of welding.

Bulletin 51 which also is for B & B Mechanics positions describes the job as carpenter work.

Bulletin 61, a Plumber title position, makes clear that the plumber must be familiar with heating systems and other work of a plumber.

We find that no valid objections has been raised to these four job descriptions and we have been referred to no rule or practice that calls for a more restrictive ruling.

There are other requirements mentioned in the Bulletins that Petitioner considers discriminatory. Bulletins 59, 60 and 61 require a valid driver's license. None of these positions -- welder, carpenter or plumber -- have been shown by the evidence to involve a substantial amount of automobile operation and there is no indication that whatever driving may be necessary could not be adequately handled by normal Company transportation facilities. The requirement will be held to be a violation except in specific instances where Carrier proves that a substantial amount of driving is necessary.

The requirement in all four Bulletins that applicants

"Must be able to read, write, speak and understand the English language"

may well eliminate a considerable number of people in Hoboken and Newark from consideration. In the absence of substantial proof that the requirement is essential for reasons of safety or efficiency, the requirement could be construed as being discriminatory. We will hold that it is a proper requirement only when Carrier shows safety or efficiency considerations and show the condition is reasonable.

It would serve no useful purpose in this type of case to find the Bulletins in question defective and to direct Carrier to readvertise them. The Meal, Job Description and Carpenter Tools provisions have been upheld. The requirements as to the use of English will be upheld only where Carrier can show that safety and efficiency make such use necessary. A driver's license may be required only if absolutely essential to the work of the position.

While Carrier has considerable latitude in determining "fitness and ability", it is not at liberty to prescribe qualifications that are discriminatory and not relevant to the position. We are not satisfied from this record that the Bulletins are defective on their face and must be revoked and denied. The need for the language and license qualifications that we have questioned may be scrutinized, however, and challenged when the positions are filled. Unless there is a realistic need for them, Carrier would be well advised to review the Bulletins and make certain that their requirements are in line with the spirit and reasoning of this Award. With respect to the language requirement, we have not taken national or local legislation into consideration and no evidence has been presented in that regard.

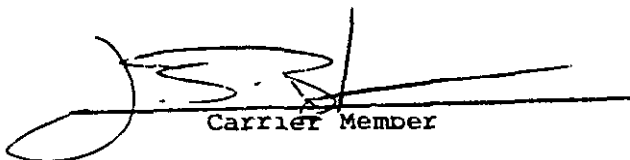
AWARD:

Claim denied subject to comments set forth in last paragraph
of Findings.

Adopted at Newark, N. J., *January 30*, 1986.



Harold M. Weston, Chairman


Carrier Member
Employee Member