PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 100

Case No. 100

Referee: Michael Fischetti

Carrier Member: J.H. Burton Labor Member: M.J. Schappaugh

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

Claim of the System Committee of the Brotherhood that:
(1) The Agreement was violated when the Carrier failed to place the successful applicants onto the position listed in Advertisement Nos. RM 231-93-1 and RP 232-93-1, dated February 11, 1993, as required by Rule (System Docket MW-3102).

(2) As a consequence of the aforesaid violation, the two (2) senior 'A' Foremen two, (2) 'B' Foremen, two (2) assistant foremen, six (6) Class 2 Machine Operators, two (2) repairmen, four (4) vehicle operators, four (4) cooks, nine (9) Class 3 Machine Operators and thirty-nine (39) trackman operators who were furloughed at the time this incident took place shall each be allowed forty (40) hours' pay at their respective straight time rates and shall be made whole.

Findings:

Upon the whole record and all the evidence and hearing in the Carrier's Office in Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The Employees contend that the Carrier posted bulletins on February 15,1993, and that the said Carrier did not cancel said bulletins by February 22,1993, or within seven (7) days from the close of the application period. Accordingly, the Employees contend that the Carrier failed to comply with the provisions of Rule 3, Section 3(e) which allows the Carrier to cancel the advertisement within seven (7) days of its posting. Moreover, the Employees contend that since the Carrier did not exercise its option, that under Rule 3, Section (d) it was obligated to award the positions within seven (7) days thereafter.

The Carrier contends that the Employees claim is procedurally defective because it was submitted on behalf of 75 unnamed "senior furloughed" employees in various job classifications. Accordingly, the Carrier contends that the claim is too broad and indefinite and that it must be dismissed. Moreover, the Carrier contends that it canceled the said bulletins on February 24,1993, without making any awards to the advertised positions. Moreover, the Carrier contends that the claimants have not suffered any injury, and that, therefore, there cannot be any entitlement since they have no loss.

Regarding the Carrier's claim of dismissal on procedural defect, the Board finds that the Organization's claim is flawed because it is vague and lacks specificity, but not fatally so.

The Board finds that the Carrier has violated Rule 3, Section 3(e), of the Agreement, when it failed to cancel the aforesaid advertisement within seven (7) days, and although the Carrier maintains that the claimants have not suffered any loss, this is not so because they have suffered the loss of a work opportunity. Accordingly, the Board notes the Carrier's violation of the Rule 3, Section (d). Such violations of the Agreement cannot be taken lightly. The Board is not making a punitive or monetary award in this instant case because the Organization has not specified the names of the claimants. Moreover, we have no way of readily identifying the names of the Employees who would have applied. The Carrier is on notice, however, that any similar future violation of the Agreement will result in more serious consequences.

AWARD

Claim is sustained in accordance with the findings herein.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016

Michael Fischetti

Michael Fischetti, Neutral Member

Mark J. Schappaugh

M.J. Schappaugh, Labor Member

J.H. Burton

J.H. Burton, Carrier Member

Executed on 1/14/99

Conrail/BMWE/SBA 1016/100

LABOR MEMBER'S CONCURRENCE AND DISSENT TO
AWARD 100 - SPECIAL BOARD OF ADJUSTMENT No. 1016
(Referee Fischetti)

The Union concurs with the Arbitrator's finding that the Carrier violated Rule 3, Sections (d) and (e) in this instance. That the Arbitrator reached a finding that the Carrier violated Rule 3 was not surprising since the language of Rule 3 is crystal clear and since several prior arbitral decisions addressed the issue and supported the Union's position (Award 24 of Public Law Board No. 3781, and Third Division Awards 29578, 31265 and 31373). These awards were presented to the Arbitrator for consideration in this dispute.

Dissent is required, however, because the Arbitrator did not sustain the monetary claim. In denying the monetary claim the Arbitrator held that:

> "The Board is not making a punitive or monetary award in this instant case because the Organization has not specified the names of the claimants. Moreover, we have no way of readily identifying the names of the Employees who would have applied."

The above finding is improper and inappropriate for the following reasons. First, whether or not the Union specifically identified an affected employe by name on the property is immaterial. It has been held in numerous arbitral awards that a Claimant need not be specifically identified by name for a claim to be valid. Instead, what is required is that the appropriate Claimant or Claimants be readily identified from the Carrier records in the event of a monetary award. In this instance the affected Claimants were clearly identified as being the senior furloughed Inter-Regional West District employes at the time the advertisements were issued on February 11, 1993. The specific names of those individuals was readily available to the Carrier at all times from its payroll records.

Second, as was pointed out during the handling on the property and at subsequent levels, including oral hearing before this Board, the Claimants were all furloughed and were automatic bidders to the positions advertised on the bulletins involved here. Hence, it would have only been a small administrative matter to determine who the appropriate senior applicants to the positions were. This is especially true since, in accordance with Rule 3, Section (d), the Carrier is obligated to announce, by posting, the successful applicants to positions within seven (7) days after the closing of the advertisement.

Third, and perhaps most importantly, the Carrier made exactly the same argument in an identical dispute which was decided in the

Union's favor by Third Division Award 31373 (J. Fletcher). Third Division Award 31373 was presented to the Arbitrator during the oral hearing of this dispute. In rejecting the Carrier's arguments regarding alleged unnamed Claimants, the Majority in Award 31373 held:

> "Carrier has argued that the Claimants are not identifiable, therefore the claim is defective. With this the Board does not agree. The bulletin had a closing date. Bids were received for the positions listed in the bulletin. The claim was made on behalf of those who would have been the successful applicants. They are easily identifiable."

The absence of a monetary award in this instance is palpably erroneous and does not serve as precedent.

In accordance with the above, I dissent,

Respectfully submitted,

Mark J. Schappaugh
Labor Member-SBA 1016