

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 99

Case No. 99

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

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to place Mr. C.W. Hansler ahead of Mr. J.E. Faller on the 1993 Philadelphia Division Structural Welder Foreman's Seniority Roster (System Docket MW-3075).

(2) As a consequence of the above-stated violation, Claimant C.W. Hansler shall be listed immediately ahead of Mr. J.E. Faller on the Philadelphia Division Structural Welder Foreman's Seniority Roster.

Findings:

Upon the whole record and all the evidence and hearing in the Carrier's Office in Philadelphia, PA, 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 Claimant, at the time herein pertinent, held seniority rights on the New Jersey Structural Welder's Roster, and was regularly assigned to a Structural Welder position on a Regional B&B Gang encompassing work on the Albany, Philadelphia, and Harrisburg Divisions, thereby establishing seniority on the Eastern Zone Structural Welders Roster.

Review of the whole record reveals that the 1993 Philadelphia Division Structural Welder Foreman's Seniority Roster, which is the subject of Mr. Hansler's seniority roster protest, was posted on March 1, 1993. Under the provisions of

Rule 4, Section 6(b), of the Agreement, the time limit of
 protesting the 1993 roster ended on May 30, 1993. Mr. Hansler's
 roster protest was filed on July 12, 1993, which is clearly beyond
 the time limits provided by Rule 4 of the Agreement.
 Furthermore, the Board finds that the Carrier has met its
 obligation under Rule 3, Section 3(b), as Carrier was not
 required to post the job advertisement at Claimant's headquarters
 point. Although Mr. Hansler was working outside of his seniority
 district at the time of ~~billposting~~ ^{billposting} of the welding position, he had
 the responsibility to contact his assignment clerk.

AWARD

Claim dismissed.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016

Michael Fischetti

Michael Fischetti, Neutral Member

Mark J. Schappagh

M.J. Schappagh, Labor Member

written dissent to follow

J. H. Burton

J. H. Burton, Carrier Member

Executed on

4/17/97

Conrail/BMWE/SBA 1016/99

LABOR MEMBER'S DISSENT TO AWARD 99
SPECIAL BOARD OF ADJUSTMENT NO. 1016
(Referee M. Fischetti)

This Award requires dissent because the Arbitrator incorrectly reached the determination that the Carrier complied with Rule 3, Section 3(b) in this instance. Moreover, the Carrier's finding goes against firmly entrenched arbitral precedent on this property when it states that the Carrier was not responsible for posting a job advertisement at the Claimant's headquarters point and that since he was working outside his seniority district he was responsible for contacting his "assignment clerk" for work opportunities.

The claim before this Board was a roster protest. A junior B&B mechanic had established seniority as a Structural Welder Foreman in late August 1992 by bidding and being assigned to a position the Claimant was unaware existed. The Claimant was unaware of the occurrence until he viewed the 1993 Philadelphia Division Structural Welder Foreman Seniority Roster. Had he been made aware of the existence of the Structural Welder Foreman position, he would have bid and been placed on the position ahead of the junior B&B employee. Because of the Carrier's failure to properly inform him to the existence of the position the junior employee obtained seniority on the roster instead of the Claimant. The roster protest was filed as soon as the Claimant became aware of the violation.

With reference to the Claimant's failure to obtain the Structural Welder Foreman position in August 1992, the Award states:

"Furthermore, the Board finds that the Carrier has met its obligation under Rule 3, Section 3(b), as Carrier was not required to post the job advertisement at Claimant's headquarters point. Although Mr. Hansler was working outside of his seniority district at the time of the bulletining of the welding position, he had the responsibility to contact his assignment clerk."

The above finding is erroneous based on a normal reading of the language of Rule 3, Section 3(b) regarding the Carrier's obligations for posting advertisements under the rule. Moreover, the finding goes against arbitral precedent on this property regarding the Carrier's obligations under Rule 3, Section 3(b). Rule 3, Section 3(b) is crystal clear. Said rule specifically stipulates that advertisements will be posted at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions, during which time an employee may file his application. As a B&B employee the Claimant was entitled to consideration in filling the structural welder foreman position advertised by Bulletin No. 16 in August 1992.

LABOR MEMBER'S DISSENT TO AWARD 99
SPECIAL BOARD OF ADJUSTMENT NO. 1016
Page 2


That was never disputed by the Carrier. The advertisement, however, was never posted at the Claimant's headquarters point. That too, was never disputed by the Carrier. A clearer violation of Rule 3, Section 3(b) could not have been imagined. Moreover, we are impelled to point out that the Carrier couldn't validly claim ignorance of its obligations under Rule 3, Section 3(b) since it had been the subject of four (4) previous disputes. Third Division Awards 27592, 29826 and Awards 51 and 64 of this Board all involved this same rule, wherein it was determined that the Carrier violated Rule 3.

There was nothing in this record which could justify the Carrier's failure to comply with Rule 3, Section 3(b).

With respect to the Arbitrator's comment that the Claimant "had the responsibility to contact his assignment clerk", we again must point out that Rule 3, Section 3(b) places the responsibility upon the CARRIER to inform appropriate employees of the availability of positions through the posting of job advertisements. There is no provision in the BMW/CONRAIL Agreement which supersedes the clear language of Rule 3 on this point.

In accordance with the above, I dissent,

Respectfully submitted,


Mark J. Schappaugh
Labor Member-SBA 1016