

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:

(a) Carrier violated the Schedule Agreement, particularly Rule 3 Section 3(d) when it failed and refused to allow B&B Mechanic Steve Davis to place himself physically on the awarded B&B mechanic's position, effective August 30, 1984.

(b) Claimant Davis shall be compensated for eight hours at the punitive rate for each day, including overtime, travel time from Red Bank, New Jersey to the Raritan River Drawbridge, and mileage.

FINDINGS:

Rule 3 Section 3(d) reads as follows:

"Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven days after the close of the advertisement. This Rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten days."

Claimant, a drawbridge operator with 11 a.m. to 7 p.m. hours and Saturday and Sunday rest days, was

awarded a B&B mechanic position with 7 a.m. to 3:30 p.m. hours and the same rest days. He was not released by Carrier to work in the awarded position within 10 days of the date of the award.

Carrier made reasonable efforts to fill the draw-bridge operator position but no properly qualified employee was interested or available. It understandably could not permit that important post to be vacant while its advertisements and recruiting efforts met without success. Finally, the position was filled with a track department employee pending qualification.

There is no evidence that Carrier acted in bad faith or in any manner attempted to evade obligations under Section 3(d). It does not appear that claimant suffered any loss because of his late transfer or was subjected to undue inconvenience.

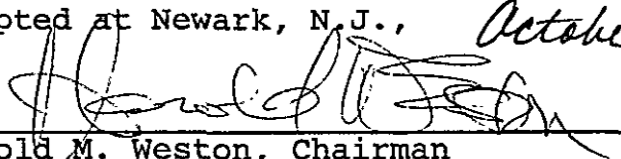
The Rule was clearly breached and where that occurs, we will ordinarily sustain a monetary claim to enforce the Rule and preserve the integrity of the Agreement. We are not in accord with Carrier's view and some Award holdings. The Board lacks authority to sustain a claim for compensation where a rule has clearly been violated if the contract does not contain a penalty pay provision.

Nevertheless, we will deny paragraph (b) of the present claim in the light of the specific facts of record and the absence of any pattern by Carrier of similar violations. The situation is one where Carrier has encountered unexpected and unavoidable difficulties in filling a critical position and where claimant has suffered no loss. Carrier will be expected to take precautions to prevent a reoccurrence of this difficult problem. Third Division Award 13376 is consistent with our general conclusion.

AWARD:

Paragraph (a) of Claim sustained. Paragraph (b) denied.

Adopted at Newark, N.J., *October 19*, 1987.

  
Harold M. Weston, Chairman

JS BAWER  
Carrier Member

W. E. LaRue  
Employee Member