

Award No. 563

Docket No. 584

2-N&W-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the job of assembling triples at West yard in air room now being worked by J. H. Blackwell, carman at Bluefield shop, be advertised to the carmen craft as per the first paragraph of Rule 17 of the existing agreement.

EMPLOYEES' STATEMENT OF FACTS: J. H. Blackwell, car repairer, was placed in the air room, west yard, Bluefield shop on or about the first day of June, 1940. This job was not advertised. Blackwell was put on this job temporary for a few days account having rheumatism. No agreement was ever reached with the committee agreeing to put Blackwell on this job in the air room at Bluefield shop.

POSITION OF EMPLOYEES: The employes contend that we are within our rights in asking for this job to be advertised to the carmen at Bluefield, under Rule 17, which reads in part as follows:

“RULE 17. When new jobs are created or vacancies occur in the respective crafts, the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs will be bulletined.”

Rule 17 in no way provides for a workman to be placed on a new job or in place of another employe filling a vacancy, unless the job is bulletined and the man gets the job through advertisement; neither is there any provision made in Rule 17 to give the company the right to place on a job a man who may be physically disabled as claimed by the management in this case, under Rule 22.

We have exhausted every possible effort in trying to adjust this case with the management from the car foreman up to and including superintendent motive power. So far, we are unable to reach an adjustment; therefore, we are herewith submitting this case with all correspondence that has been exchanged between management and employes as exhibits, *exparte*.

CARRIER'S STATEMENT OF FACTS: Mr. J. H. Blackwell entered the service of the Norfolk and Western Railway Company at Bluefield, W. Va. as a car repairer helper on October 4, 1922. He was promoted to car re-

The carrier asserts that if the employes' contention is sustained, Rule No. 22 of the agreement is rendered meaningless because if this job has to be advertised and if an able-bodied man makes application for it there would be nothing left for the carrier to do but to require Mr. Blackwell to lay off until he is able to return to duty in his former position of car repairer on the heavy repair tracks. A job created for a disabled employe under Rule 22 is not a newly created job within the meaning of Rule 17. Rule 17 must be interpreted and applied in the light of Rule 22 in order to carry out the purposes of the collective bargaining agreement.

The Second Division will understand that there are one hundred and twenty carmen on the carmen's seniority roster at Bluefield, W. Va. Mr. Blackwell is carried as No. 78 on that roster. Carmen receive the same rate of pay (78¢ per hour) for work performed on the heavy repair tracks as well as the work performed in the air brake room. Thus, of the seventy-seven carmen senior to Mr. Blackwell, none of these men receive a rate of pay lower than Mr. Blackwell. Were this job in the air brake room to be advertised to able-bodied seniors in the carmen's craft, there would be no economic benefit to any successful senior bidder. The only advantage to the senior carmen would be to procure work of a lighter nature. Thus, the only effect of advertising this job to able-bodied seniors would be to deprive the disabled employe of an opportunity to earn a livelihood at work which the organization and the carrier had agreed would be reserved for disabled employes.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The record in this case does not show the provisions of the agreement were violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1941.