

Award No. 1665
Docket No. 1589
2-PRR-URRWA-CIO-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA—C. I. O.

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That within the meaning of the Controlling Agreement, and particularly Regulations 2 and 3, certain Carmen Helpers have been unjustly dealt with at Mingo Junction on the property of the Pennsylvania Railroad Company, in that they were unilaterally deprived of their seniority rights.

(2) These Carmen Helpers who made applications for positions as car inspectors on advertisements 19, 21, and 23, were denied their seniority rights as provided for in the effective agreement dated July 1, 1949.

(3) We claim for all employes involved in these advertisements in seniority order their proper place on the seniority roster and compensation for all monies lost due to this violation on the part of the carrier as of the effective date of the awards.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties dated July 1, 1949, copy of which is on file with the Board and is by reference hereby made a part of this statement of facts.

At Mingo Junction, Panhandle Division, Central Region, the carrier maintains a force of carmen and helpers.

The aggrieved, hereinafter referred to as the claimants, are employed as helpers at the seniority point where the dispute originated.

The claimants, T. V. Bazar; A. H. Regan; F. M. Conrad; D. R. Brown; Elwood Rine; E. S. Cain; R. A. Myers; J. R. Iadanza; A. R. Hill; H. L. Edmonds; E. D. Fetty; and J. K. Kotelas, made applications for the positions of car inspectors on bulletins 19, 21 and 23, as is provided for in Regulation No. 2. The carrier refused to recognize the applications of the claimants thereby depriving these employes of their seniority rights. The advertisements in question involving the positions in dispute were dated as follows: Bulletin No. 19, March 10, 1950; Bulletin No. 21, March 23, 1950; and, Bulletin No. 23, April 6, 1950, and the effective date of the instant dispute is ten days subsequent to the dates of the advertisements.

The claimants were given no opportunity to qualify for the car inspectors positions involved, nor were they given their rightful positions on the seniority roster.

letter that in order to handle the claim the carrier must have the names of employes affected and information as to what the claim covers. The local chairman, however, did not furnish the specific information requested, but continued to process indefinite claims.

The carrier, in preparing this case for presentation to your Honorable Board, has been obliged to speculate as to the names of possible claimants. None of the employes named in the carrier's statement of facts has ever presented a claim for compensation as required by Regulation 4-P-1. The carrier has no way of knowing whether they are the employes who initiated action in this claim.

The carrier contends, therefore, that a claim on behalf of "all employes involved in C.I.O. Advertisements 19-21-23 in that car repairmen's helpers who made application for car inspector positions did not receive same" is improper and must be denied because it does not comply with Regulation 4-P-1 of the applicable agreement, nor with the provisions of the Railway Labor Act. Furthermore, a claim of this nature does not give the Board any basis for making an award sufficiently definite for the carrier to comply with. There is no indication that losses, if any, have been sustained by any identifiable employes, and it is probable that no proof will be offered by the organization to indicate that any such damage has accrued. Under these circumstances, such a claim is too vague and indefinite to be considered by the Board and does not furnish any basis upon which a valid award can be made.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

Therefore, the carrier respectfully submits that your Honorable Board should dismiss the claims of the employes in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

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.

During the months of March and April, 1950, certain car inspector positions were advertised at Mingo Junction in Bulletins Nos. 19, 21 and 23. No bids for the advertised vacancies were received from employes holding regular assignments in the class in which the vacancies existed. The claimants (carmen helpers) submitted bids but due to not having been examined and qualified as car inspectors at the time assignments were made, they were not placed on the positions on which they had bid.

The record shows that prior to the date of the bulletins referred to above, notices were posted advising that examinations would be held for the purpose of qualifying car inspectors. Under the practice in effect, those employes desiring to be so qualified are required to obtain instruction books, report to a designated supervisor for instructions and qualifying. The successful bidders acted accordingly but the claimants up to the time of the declination of their bids, took no action. Since the vacancies covered by Bulletins Nos. 19, 21 and 23 have been filled however, all of the claimants except two, neither of whom are working in the carmen's craft, have qualified as car inspectors in the usual manner.

The employes do not contend that the claimants were qualified at the time the assignments as per above bulletins were made, but it is their contention that notwithstanding this fact the claimants should have been placed on the positions and after a fair trial, if found not to be qualified, they should have been removed. Further contention is made they would have established and retained seniority in the Car Inspector's Class.

It is the carrier's position that car inspection is inherently responsible work and that the carrier is not acting unreasonably when it requires an employe who wishes to be assigned to inspection work to establish his qualification by taking an examination, either written or verbal. With this contention we must agree.

Under Regulation 2-A-1 which refers to the advertisement and filling of vacancies or new positions there is outlined the various procedures to be followed. With the exception of those employes holding seniority in the class in which the vacancy exists, the regulation specifies applicants must be "qualified." On the basis of the record before us the Controlling Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1953.