

Award No. 6091

Docket No. 5797

2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated Rule No. 17 of the Current Agreement when it failed to identify and specify, for the purpose of bidding, the positions of two (2) coach repairers advertised on Notice No. 31, dated August 9, 1967.

2. (a) That the Norfolk and Western Railway Company be ordered to assign Coach Repairer C. J. Hurt to job in lacquer and Plant Department, as per his application of August 10, 1967.

(b) That the Norfolk and Western Railway Company, be ordered to bulletin all jobs stating shift, rest days, duties and work locations, so employees may determine whether or not the position would be desirable to them.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier maintains a shop, with facilities for the building and repairing of passenger, express and diner cars at Roanoke, Virginia, commonly referred to as the passenger car shop.

On August 9, 1967, carrier posted notice no. 31, wherein it was stated that applications would be received, for two (2) coach repairers, none of which included any description of the type of work to be performed, on such jobs.

However, a rumor circulating within the shop was that one (1) of the positions would be in the plating and lacquer plant, the other position on windows, doors and sides of passenger and baggage cars.

C. J. Hurt, hereinafter referred to as the claimant with thirty (30) years seniority as coach repairer and duties consisting of extra heavy work in pits under the passenger and baggage cars, made application for one of said positions, Committeeman H. O. Scaggs delivered claimant's bid to Foreman

the precise location of the job. Since its beginning in 1919 the meaning and intent of this rule has not changed. The practical application, or practice, has survived four (4) revisions of the agreement, which is clearly indicative that both parties considered this method of bulletining jobs as satisfying the provisions and intent of the rule.

On the local level this dispute began as a difference of opinion as to the provisions of rule 17 relative to the content of a bulletin advertising a job in the passenger car shop. Upon appealing the claims the general chairman apparently recognized the futility of explaining away a practice of approximately forty-eight (48) years, abandoned this tactic and endeavored to secure a new rule which clearly and definitely stated what was contended the present rule provided. If, as the organization originally contended, the present rule provided for specific information on the bulletin, then the proposals of the general chairman were meaningless and superfluous. Obviously the requests for the rewritten rule are an admission that the present Rule 17 does not provide for those items contained in the requests.

In that the various divisions of the board have ruled that the act of both the carrier and the organization accepting a practice over a period of years as indicating the meaning and intent of a rule, which can be changed only through negotiations, carrier respectfully asks that this protest be declined.

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

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

Parties to said dispute waived right of appearance at hearing thereon.

The job vacancies at Carrier's East End Shops, Roanoke, Va. bulletined in Notice #31, dated August 9, 1967, dealt with two Car Repairers to perform General Coach Repairer's work in the passenger car shop. Under such posting, any and all work properly embraced within the Car Repairer job content may be assigned to the successful applicants.

Rule 17 of the N&W Shop Crafts Agreement obligates the Carrier to bulletin "all vacancies or new jobs created." There is no requirement in said rule to specify either what the preponderance of the job duties will be, or in what particular work area they will be performed. Thus, neither contractual compulsion nor practical operating considerations dictates that Notice #31 mention that one of said jobs would be in the plating and lacquer department, and the other would be on windows, doors and sides of passenger and baggage cars, particularly where, as here, there is an insufficient amount of those activities to warrant the assignment of full time employees thereto.

The reference in the bulletin to the applicable job titles, in describing vacancies and newly created jobs, satisfies the posting requirements of Rule 17. If the parties were to desire that the bulletin set forth a more precise delineation of job duties and work areas than is presently called for under Rule 17, it is their responsibility to negotiate an appropriate revision of or amendment to Rule 17. Obviously, the parties have not authorized this Board to do that for them.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1970.