Award No. 691
Docket No. 676
2-ACL-MA-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the three employes named herein were discriminated against by reason of carrier disallowing their bids and assigning junior bidders in preference to each.

1—E. L. Burbage, machinist, Tampa, Florida
2—R. E. Roberts, machinist, Tampa, Florida
3—J. D. Clemons, machinist, Jacksonville, Florida

(b) That carrier is without authority under Rule 12 (j), to act as sole judge in determining an employe's qualifications.

(c) That carrier be required to allow the bid of each of the claimants, together with compensation representing the difference between the amount each has earned and the amount which each would have earned had claimants been assigned according to their seniority.

EMPLOYES' STATEMENT OF FACTS: The claim in case of each of the above named employes has arisen as a result of carrier moving under the provisions of Rule 12 (j), to arbitrarily pass upon the qualifications of employes seeking to exercise their seniority on jobs or vacancies developing in their classification at points where employed. The issue in each instance is the same and therefore jointly presented in the interest of curtailing repetition if presented otherwise.

E. L. Burbage entered the carrier's service at Rocky Mount, North Carolina, September 18, 1922, working in the machinists' classification and receiving helpers' rate of pay until January 18, 1923, when approved for the rating of journeymen machinist and placed on the roster as such. He transferred from Rocky Mount to Tampa, Florida, at opening of Uceta shops in the year 1927, retaining his seniority date of 1-18-23. The preponderance of Burbage's work at Tampa has been on work generally performed in the machine shop, in which department he is now employed. Since transferring to Tampa he has worked more than two years in the erecting shop. He has never been reprimanded or disciplined for poor or inefficient work either at Rocky Mount or Tampa. Burbage is 39 years of age and weighs 163 pounds.

On May 7, 1941, the following bulletin was posted at Uceta shops over the signature of Master Mechanic W. C. Stephenson:

The whole controversy in regard to the three aforementioned mechanics exercising their seniority on the jobs bid on, is just a question as to whether or not the railroad company has the right to enforce Paragraph (j) of Rule 12 of the agreement entered into between the railroad company and the employes of the mechanical department, dated November 11, 1940. This paragraph reads as follows:

"Seniority as mentioned in any of the rules of this agreement will govern when the employes desiring to exercise such rights have the ability to perform the duties required, but the Management will not be required to place employes on vacancies or new jobs if they are not qualified."

The general chairman of the machinists takes the attitude that employes must be allowed to exercise their seniority on jobs if they bid these jobs in, regardless of whether or not they are qualified. The railroad company, on the other hand, gave careful consideration to all the bids placed for these jobs and picked the senior men when they knew that they were qualified and could do the business. The two machinists at Tampa and the one at Jacksonville were the only three men that were considered unfit for jobs, out of a total of thirteen jobs bulletined.

Surely no discrimination could be claimed in these cases as it is the earnest desire of the carrier to assign men according to their seniority when they know they have the qualifications and can do the job.

The carrier, therefore, contends that according to Paragraph (j) of Rule 12 of the agreement, as quoted, they have the right to assign mechanics for jobs bulletined, in accordance with their qualifications.

Carrier, therefore, contends that the rules of the agreement have not been violated, and respectfuly requests the National Railroad Adjustment Board to deny this claim.

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 and 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 evidence of record supports the conclusion, in the circumstances of this proceeding, that the bids of Machinists Burbage, Roberts and Clemons, senior bidders, were rejected without adequate justification and in violation of the agreement.

AWARD

Claim of employes, as stated in paragraphs (a) and (c), sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1942.