

Award No. 852

Docket No. 822

2-GN-BM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Anton Weichert, boilermaker welder at Kelly Lake, Minn., be paid the difference between boilermaker and welder's pay from January 1, 1940 to February 17, 1941.

EMPLOYEES' STATEMENT OF FACTS: Welder's position at Kelly Lake was not bulletined until February 17, 1941, although a junior employe was paid welder rate for a number of years prior to bulletin of position for welder, regardless of the fact that numerous verbal requests had been made for a bulletin.

POSITION OF EMPLOYEES: The bulletining of this welder position was requested verbally, by the employes at Kelly Lake (marked Exhibit A) but with no success, and it was brought out in general discussion of this case, that the reason they were giving the differential to a junior employe was for supervising rather than welding, as they had no authority for a leadman or supervisor, but the fact remains that he was doing the welding along with the supervising.

This case was finally taken up in writing with the master mechanic, Exhibit B, and his reply, marked Exhibit C, in which he states "It is rather late to ask that the job be bulletined and I question whether there is work enough at Kelly Lake to justify the welder all the time." The master mechanic raises the question as to there being enough welding to keep a man welding all the time; nevertheless, one man was paid the welder's rate and did weld most of the time, therefore the job should have been bulletined as per Rule 12 (b):

Rule 12

Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to supervisory positions. The word "sufficient" is intended to more clearly establish the right of a senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability. All new positions and vacancies of thirty (30) days or more shall be bulletined for a period of five (5) days before being permanently filled. Such bulletin shall specify whether such position or vacancy is permanent or temporary. A permanent position is one that will continue in excess of six months' service. A position or vacancy which has been bulletined as temporary, but which later develops into a permanent one will be

There may, of course, be a question as to the date upon which regular bulletin should have been placed and claimant assigned thereto. as noted in the carrier's statement of facts, request for such assignment was specifically made (although not made in writing), on October 18, 1940, and the local supervisor thereafter requested instructions in the premises from his superior officers, owing to the fact that there had been no material change in the situation at that time, and the further fact that the schedule of September 1, 1937, then in effect, contained a provision in Rule 12, reading: "Thirty days' continuous service on a vacancy bulletined as permanent (except vacancies caused by sickness), establishes rights to such position if not protested within the thirty day period." There was a local impression that Zosgornik had thereby established himself, just the same as if a bulletin had been issued. Upon final appeal of such question, it was held by the final appeal officer that such application was not proper, inasmuch as there was no evidence of a bulletin of such permanent vacancy ever having been issued, and in accordance therewith, such defect was remedied by the then issuance of bulletin and the placing of the senior bidder upon such permanent vacancy. The delay between October 18, 1940 and February 17, 1941 was occasioned by successive reference of the matter to higher officers and the necessity for developing the history of the entire service of Zosgornik from 1929 on. Possibly four months' time in the development of three steps of appeal and of eleven years' history of the attendant circumstances may be considered to have been somewhat excessive. However, it is entirely evident that a proper final ruling could not be made without development of such history, and that it is impossible instantaneously to secure and check the record of eleven years' service, and it cannot be considered as proper for employes to suddenly demand a change in a condition which had tacitly been accepted by all concerned for a period of years, and set up a claim that adjustment thereof must be made as of a retroactive date arbitrarily set by them. The conditions on January 1, 1940 were no different than they were on January 1, 1939, and on January 1, 1940 there was not on file with the carrier any protests, either written or otherwise, as to such condition.

The carrier is perfectly willing to concede that the condition complained of on October 18 was irregular and should have been corrected; it made such correction as quickly as the facts in the matter were fully established to the satisfaction of the final appeal officer. However, such correction involved a change in the working conditions as they existed, and, in the carrier's opinion, even under the provisions of the Railway Labor Act, and regardless of the amount of time actually used in getting at all the facts, could not justify the filing of a claim for any period prior to thirty days after the filing of their request on October 18, 1940.

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.

It is conceded that the employes on October 18, 1940, requested position of boilermaker welder to be bulletined. The carrier took recognition of this request but did not bulletin position until February 17, 1941.

Rule 27 provides:

"* * * No claims for back pay will be considered that are not presented with the original grievance nor will allowances for time prior to the origination of such grievance be considered or allowed."

The record is clear that the first presentation for back pay was made to the carrier on December 14, 1940.

AWARD

Anton Weichert shall be paid difference between boilermaker and welder's pay from December 14, 1940 to February 17, 1941.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1942.