# Award No. 1576
# Docket No. 1511
# 2-CB&Q-EW-'52

## NATIONAL RAILROAD ADJUSTMENT BOARD
## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

## CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement the Carrier improperly assigned Electrician Helper Apprentice James Webb to fill the vacancy created by Electrician A. T. Moore being off account of sickness during the period February 6, 1950 to February 10, 1950, inclusive, and on February 13, 1950.

2. That accordingly the Carrier be ordered to compensate the Electricians who were entitled to be called to fill this vacancy on the aforesaid days in the amount of eight (8) hours at the time and one-half rate for each day.

**EMPLOYES' STATEMENT OF FACTS:** Electrician A. T. Moore regularly assigned electrician in the first shift with work week, Monday through Friday with Saturday and Sunday as rest days at the Rankin Street Coach Yard, St. Louis, Missouri, went home sick at noon February 1, vacancy was not filled February 2 and 3. February 4 and 5 were his rest days. On Monday, February 6, 1950, the carrier upgraded Electrician Helper Apprentice James Webb to fill Electrician Moore's assignment, who filled it on February 6, 7, 8, 9, 10 and 13, 1950.

The Memorandum of Agreement effective March 10, 1948, and agreement effective September 1, 1949, are controlling.

**POSITION OF EMPLOYES:** It is submitted that under the provisions of Article 10 of the Memorandum of Agreement effective March 10, 1948 reading:

> "The provisions of this agreement do not apply to known temporary vacancies of fifteen (15) days or less duration."

the carrier was not authorized to upgrade Helper Apprentice Webb to fill the temporary vacancy caused by the illness of Electrician Moore as the facts reflect that it was a vacancy of less than fifteen (15) days. Therefore, it is obvious that the agreement of March 10, 1948 is not applicable in cases of this type where the temporary vacancy is for less than fifteen (15) days.

electricians are employed at St. Louis are separate seniority districts, therefore help could not be recruited from these sources. Of course, to have used a second or third shift electrician to fill this vacancy would be violative of the intent expressed by the parties in Rule 9 of the printed schedule.

It has often been held by the Board that carriers are not required to discover beneficiaries for time claims originated by the organizations. For example, it was held—

**First Division Award 13296, Referee Mart J. O'Malley.**

> "Furthermore, we are here presented with a claim for unknown persons on unknown dates except May 25, 1943. This Division has held that it is not proper to direct the Carrier to search and evaluate records to make a claim for proponents of one."

In the instant case, a search of carrier's records would be fruitless. First shift men could not be found to receive the penalties demanded by the petitioner, even if by means of some devious processes of reasoning, it were held an agreement violation occurred. And Rule 9 has the effect of prohibiting payment to employes on any other shift.

It should be apparent that the only alternative to the upgrading of Helper Apprentice Webb in this case would have been to blank Electrician Moore's position during his absence. No first shift journeymen were available to fill the vacancy. Webb would then have continued to perform much of the same work, but would not have received the mechanic's rate. By upgrading this helper apprentice the carrier was able to pay him the electrician's rate for the duration of Electrician Moore's absence. The action taken was really a benefit to the employes as compared to the only alternative of blanking the job. The organization has seized upon this benevolent act of management in a wholly unwarranted attempt to extort additional sums in favor of parties whose names they are unable to mention.

In view of the facts heretofore presented, there is no basis, contractual or otherwise, upon which to support the claim herein contained. It should be denied in its entirety.

**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.

Electrician Moore, having an assigned-work-week of Monday through Friday, was employed at the carrier's Rankin Yard, St. Louis, Missouri. He went home ill on Wedneday, February 1, 1950. His position was not filled until Monday, February 6, after the general foreman had called his home and had been informed by Moore's wife that Moore was very sick and after the foreman had then consulted the local chairman of the organization in respect to upgrading Electrician Helper Apprentice Webb to fill the vacancy temporarily. The local chairman's approval was not unqualified, but the foreman moved Webb up to protect Moore's position. Webb filled the position February 6, 7, 8, 9, 10, and 13. On February 7, the local chairman told the foreman he (the chairman) could not approve Webb's upgrading and requested that the vacancy be filled by regularly assigned electricians from the overtime list under Rule 9 of the agreement effective September 1, 1949. Moore returned to his position on February 14, 1950; and on that date Webb ceased filling Moore's position.

It appears that there was a delay of about 19 months in filing the instant claim. Consequently, the carrier asks us to bar the claim on the basis of **laches.** We do not concur with the carrier's contention. It is obviously proper, in terms of equity, that claims should be filed and handled promptly. But our rulings here must be based on interpretations of the parties' agreement and of the Railway Labor Act. We find therein no statute of limitations.

The first issue to be decided in this case is, which of the parties' agreements is controlling—the Rules Agreement effective September 1, 1949, or the Upgrading Agreement of March 10, 1948? Section 10 of the latter states that the provisions of the 1948 agreement do not apply to "known temporary vacancies of fifteen (15) days or less duration." Accordingly this first issue comes down to a question of fact: When the carrier's management temporarily upgraded Helper Apprentice Webb, did it know that the vacancy created by Moore's illness would be less than fifteen days in duration?

The record suggests that the answer to this question is in the negative. The carrier contends that it genuinely believed, on the basis of the foreman's conversation with Moore's wife, that Moore's illness would extend more than 15 days, and it had no way of knowing that the duration would be less. We do not think that the organization has sustained its burden of proof to show otherwise.

If this is so, then the agreement of March 10, 1948, is applicable to the instant case. The next question turns on the meaning and intent of its relevant provisions. We hold to the general view that, except insofar as it is subject to restrictions or prohibitions by law or voluntary agreement with its employees, the carrier is free to act in respect to such employes. Are there limitations or prohibitions in the controlling agreement? And, if so, do they bar the action taken by the carrier in this case?

It appears that the agreement of March 10, 1948, was adopted by the parties to take care of the problem created by the shortage of qualified mechanics. In this agreement the parties provided, under specified conditions and restrictions, for a more rapid advancement of apprentices and helpers to mechanics' work and pay than was ordinarily permitted. It appears also that the kind of upgrading contemplated by the parties was in general to be of a relatively permanent nature, for only one portion of the agreement. Section 5—talks about "temporary advancement." It appears further that the carrier's management under this agreement has the prerogative of making the relatively permanent sort of upgrading without obtaining the concurrence of employes' representatives so long as the agreement's restrictions and rules are adhered to.

But Section 5 of that agreement (which is the one involved here, because Moore's vacancy was not permanent) does require the concurrence of local employes' representatives in respect to "the selection of employes for temporary advancement." We agree with the carrier that these words do not require the carrier and the representatives to agree on whether a temporary upgrading as such shall be made; that kind of action appears also to be the carrier's prerogative. But to us the quoted words do require agreement as to **which** employe(s) shall be temporarily advanced.

The major issue in this case then comes down in the first instance to a question of fact: Did the employes' representative, the local chairman, agree with the foreman on the temporary upgrading of Webb to Moore's position? The record does not so show. We think that the organization has sustained its burden of proof on this question.

But this finding does not settle the major issue. Given our finding that the carrier has the right to decide there shall be a temporary advancement as such, we think that under Section 5 the local chairman was obligated to

negotiate with the foreman as to which apprentice—Webb or some other—should be moved up. The record shows that he did not do this but chose rather to argue against any upgrading at all. In this we deem he was wrong. Agreement on this matter should not have been difficult and should have been forthcoming.

We do not find that the carrier violated any provision of the applicable agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: (Sgd.) Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1952.