

Award No. 1604
Docket No. 1519
2-AT&SF-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly denied Machinist F. M. Asbell compensation for travel and waiting time, Arkansas City to Ponca City and return, and expenses incurred while at Ponca City during the period November 6, 1949 to January 30, 1950, inclusive.

2. That accordingly the Carrier be ordered to compensate Machinist Asbell for the aforesaid travel and waiting and all expenses incurred during the aforementioned period.

EMPLOYES' STATEMENT OF FACTS: Machinist F. E. McCartney, regularly assigned machinist at Ponca City, was off duty on account of injury. His assignment was filled for the period from October 4 to November 5, 1949 by the assignment of Machinist C. W. Woosley of Arkansas City on a temporary vacancy. Due to Machinist Woosley returning to Arkansas City to fill another assignment, Machinist McCartney assignment was again advertised to the employees at Arkansas City as a temporary vacancy on November 1, 1949. No bids being received for the assignment, and there being no furloughed machinists at Ponca City, the position was filled by assigning Machinist Asbell, hereinafter referred to as the claimant, the junior machinist at Arkansas City. The claimant filled this temporary assignment during the period November 6, 1949 to January 31, 1950, inclusive.

The agreement effective August 1, 1945, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that Ponca City is an outlying point where only one machinist is employed, the occupant of that one position being Machinist F. E. McCartney, who was off account of injury during which time he did not relinquish his rights to the position he owned and was subject to be returned to this position when he recovered from his

which would involve the exercise of seniority, as in the instant dispute. In the approximately 7 years that the current agreement has been in effect this is the first and only claim presented by the organization having representation of shop crafts employes during that time which seeks to place an interpretation on the application of the rule which is contrary to the practice of these approximately 30 years.

Paragraph (e) of shop crafts Rule No. 16 provides that:

"Employes exercising seniority rights under this rule will do so without expense to the Company."

It cannot be disputed that the claimant secured the assignment at Ponca City in the exercise of seniority. While it is true the claimant did not place a bid for the position at Ponca City, nevertheless, paragraph (c) of shop crafts Rule No. 16 provides that when no bids are received a position will be filled by assigning the junior qualified employe of the craft. The claimant was the junior qualified employe of the craft and he was assigned. The handling given the claimant was in the exercise of seniority rights, he being the junior qualified employe.

CONCLUSION:

A careful review of the facts set out in the carrier's submission reveals the following specific points in support of its position:

(1) That under the provisions of Rule 16 of the general agreement, Mr. Asbell was properly assigned to fill the position at Ponca City account no bids having been received and he being the junior qualified employe eligible to submit bid.

(2) That his assignment is supported by the employes under interpretation of former Item (7) of Appendix "B" as set out in System Federation 97's letter of July 17, 1948.

(3) That Award 1282 of the Second Division of the National Railroad Adjustment Board in the A. K. Sump case, carman helper, Newton, had the effect of interpreting former Item (7) as combining the home point and the designated isolated point as one indivisible point, when reducing the force and, conversely, the same application must be given the item in increasing or filling vacancies, which is what was done in the Asbell case.

Obviously, the claim is without merit, contrary to the rules, and is not supported, in view of the impressive record of past practice and understanding, and should be denied.

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.

The present dispute is identical in principle with that described in Award No. 1603. For the reasons therein stated, an affirmative award is required.

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Harry Sassman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1952.