

Award No. 1904
Docket No. 1758
2-T&P-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the bulletin posted at Fort Worth Shops, Fort Worth Texas, March 26, 1953, advertising position of Machinist was vague and improper to the extent of arbitrarily changing the provisions and application of Rule 10.

2. That the Carrier be ordered to restore the successful bidder of the position contemplated by Bulletin 3 to said position.

EMPLOYEES' STATEMENT OF FACTS: The day shift at Lancaster Shops, Fort Worth, Texas, was unable to keep up with the increase in the amount of cylinder, liner and piston work required in the Diesel Shop; therefore, the carrier decided to rearrange the working force of machinists. In the rearrangement of the force a machinist job was abolished on the third shift and an additional machinist job was added to the second shift as per bulletin No. 3, posted March 26, 1953 and reading as follows:

"Effective with close of work March 30, 1953, following job abolished:

LS-47, Diesel Shop, held by C. R. Harris"

This particular job was assigned 5 days per week, 11:30 P. M. to 7:30 A. M.

"Bids will be received in this office, closing at 12 Noon, March 31, 1953 for the following job:

LS-47, Diesel Shop; 3:30 P. M. to 11:30 P. M. five days per week, rest days Saturday and Sunday."

Machinist W. F. Parrish, who was employed on the second shift on running repair work, was designated by bulletin to be the successful bidder on Bulletin No. 3 following which he was assigned to the "head and liner shop," working up cylinder assemblies. Parrish worked this job approxi-

it is not in accordance with the Railway Labor Act. The Board is without authority to decide what the rule ought to be. It has authority only to interpret the rules and apply them to the facts. In interpreting the rules, the Board must look to practice under the rule over a period of years, especially in this case since the practice has been accepted by the employes as is shown above.

When this case was handled on the property, it was a very peculiar sort of claim. It consisted of two demands which were supported only by each other. It was like a man lifting himself by his own bootstraps. First, said the organization, change the bulletin to conform to the job you intended to advertise. Then, said the organization, change the job to conform to the bulletin you have just written. This made a complete circle. It begged the question entirely. The claim was not in contact with reality at any point.

If the present claim is the same claim that was handled on the property, then the carrier can only say that it is based on the assumption of facts which are not correct and rules which do not exist. The carrier did not intend to bulletin such a specialized job, and did not do so, and none exists. There is no rule or reason why one should exist.

Furthermore, in the handling of the claim on the property, no evidence was offered to show that there was ever any intent to create or bulletin such a specialized job, or to show that such a specialized job was created. Any evidence to that effect offered before this Board will not have been presented to the carrier and made a part of the particular question in dispute, as required by the Board's Circular No. 1, issued October 10, 1934. Therefore, the carrier objects to the Board considering any such evidence that may be offered now, and moves that it be stricken from the record.

The claim as stated to your Board seems to be that the bulletin changed Rule 10, and that the carrier should restore Mr. Parrish to the position contemplated by the bulletin. The carrier does not know what this means, and therefore cannot properly answer it. This statement of claim appears to be patterned after the claim in Award 962, where a claim stated in that manner, was sustained on the basis of facts and practices which have no similarity or relation to those in this case. The carrier cannot ascertain whether the instant claim, as presented to your Board, is the same claim that was handled on the property or not. If it is not, the carrier respectfully moves that the Board dismiss it because it has not been handled in accordance with the provisions of the Railway Labor Act.

If this is the same claim that was handled on the property, the carrier respectfully requests that it be denied for the reasons stated.

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.

Carrier published Machinist bulletin identifying position as "LS-47, Diesel Shop," stating shift and rest days. Employes assert that it was mutually understood that the successful applicant would remain on the head and liner work at all times; that therefore the bulletin was improperly vague and that Parrish who bid in the job had wrongfully been assigned to other machinist work than that contemplated by the bulletined job which he bid in.

Carrier explicitly denies any such understanding. It asserts that its practice has been to avoid specialization within the shop crafts, except where there was a pay differential, and that the assignment bid in by claimant was not established primarily for head and liner shop work but for the purpose of changing one machinist from third shift to second shift due to increased work in that shift. It further asserts without denial, that the amount of cylinder assembly work on the second shift varies greatly in that several men may do some of it one day and there may be none to be done on another day.

Here we have a newly established position so there was no replacement of any special work. The head and liner work fluctuated greatly. There was and had been no specialization of work on that shift and the different types of work were all carried on in the same Diesel Shop, as identified in the Bulletin.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 25th day of March, 1955.