Award No. 2375
Docket No. 2167
2-CB&Q-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Electrician Sullivan was improperly removed from his regular assigned job on August 22, 1954, and used to fill vacancy of Electrician Kaskie, while his job was filled by Electrician H. Kipper and L. Hoppes.

2. That accordingly the Carrier be ordered to compensate Electrician R. R. Riley in the amount of 8 hours' pay at the time and one-half rate for the above date.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, employs Electrician M. Kaskie at 23rd Street Coach Yard, Denver, Colorado. Mr. Kaskie was regularly assigned to work the 8:00 A. M. to 4:30 P. M. shift with a thirty minute lunch period on August 22, 1954. Electrician Kaskie reported off sick on this date and the carrier required that his position be filled. To fill this position, they removed Electrician Sullivan from his regular assigned position and placed him on Mr. Kaskie's position. The carrier then filled Electrician Sullivan's position by placing Electrician Kipper and Hoppes on it leaving their positions vacant.

Electrician Riley, hereinafter referred to as the claimant, was available to fill Electrician Kaskie's position on Sunday, August 22, 1954, if called.

The agreement effective October 1, 1953, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that Electrician Sullivan was assigned a job pursuant to Rule 16 which reads as follows:

> "Rule 16. (a) The indiscriminate exercise of seniority to displace junior employes, which practice is usually called 'rolling' or 'bumping' will not be permitted. However, an employe whose job is abolished, or who may be displaced from his position by other causes

The theory of monopolistic rights of a craft is the bane of modern labor relations in the railroad industry. Many awards deal with the subject of the rights of craft as a whole to particular work. But this claim goes one step further, in that it seeks to establish individual monopolies to particular work within the craft monopoly. The carrier is confident this Board will not sustain this claim, when it is so utterly devoid of support in the agreement between the parties.

Boiled down to its most realistic aspects, this dispute really amounts to an effort by petitioning organization to create more overtime work for the employes it represents, when circumstances were such that the carrier's requirements did not necessitate working anybody at the punitive rate. In a recent Third Division case, the Board held—

Third Division Award 7227, (Clerks v. MoPac, Referee Livingston Smith).

> "This Board has held in numerous Awards that a Carrier is not bound to pay the punitive rate for work done if the same can be accomplished at the straight time rate, within the framework of the collective agreement."

The Second Division should follow the same principle here, and if it does, it must find that no violation of the agreement existed.

The monetary claim on behalf of Electrician Sullivan is stated in part 2 thereof as being for eight hours at the time and one-half rate. The organization reaches the heights of optimism in claiming the punitive rate, for it must know very well that this rate applies only to work actually performed. This Board has so held in numerous awards, for example see Second Division Award 1771, and Third Division Awards 5092 and 5117.

In conclusion, the carrier states this claim is absolutely without merit, because—

1. Under the agreement between the parties and the practice on the property, the carrier has no obligation to fill temporary vacancies of short duration.

2. The rules of the schedule cannot possibly be interpreted in a manner to support the individual monopoly of work theory under which this claim is progressed.

3. The understandings between petitioning organization and carrier, evidenced by the exhibits attached to this submission, proves beyond question that the employes' argument is contrary to what has been agreed upon.

4. The bulleting procedure also will not support the employes' case, since no particular duties are advertised with the particular positions.

5. The entire claim is merely an attempt to gain more overtime work, and would lead to ridiculous results.

For the reasons expressed herein, this claim must 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.

Electrician M. Kaskie was regularly assigned 8:00 A. M. to 4:30 P. M. at carrier's 23rd Street Coach Yard at Denver, Colorado. On August 22, 1954, Kaskie reported off sick. Carrier directed Electrician Sullivan to leave his regularly assigned position and work the temporary vacancy. Electricians Kipper and Hoppes were assigned to perform the work of Sullivan's position. The positions of Kipper and Hoppes were not filled. Claimant contends that he was available and should have been called for Kaskie's vacancy.

The record shows that Electricians at this point are assigned as such without the specification of particular duties. No rule is pointed out to us that requires a temporary vacancy of one day to be filled. It is shown that in at least 80 instances from April 1954 to January 1956, such vacancies were not filled in similar cases. It is shown further that a letter agreement was entered into between the parties by which it was acknowledged by the Organization that local officers are not precluded from taking an electrician from his assigned position for other work.

The Organization concedes that if Kaskie's one day vacancy was not filled they would have no cause for complaint. It is their contention that the carrier could not fill the vacancy with another Electrician whose position was in turn filled by other employes. We fail to follow the reasoning of the Organization on this point. If it is not necessary to fill a one day temporary assignment and the carrier can marshall its forces to get the work done, it follows that no violation of the agreement has occurred. The fact that carrier changed its work assignments to get the work done is not contrary to their rules. Since the Organization concedes, apparently, that a one day temporary vacancy need not be filled except where operational needs require, there was no violation in not filling the positions of Kipper and Hoppes, nor using Sullivan on Kaskie's position, and claimant has no basis for complaint under the rules. The claim that an Electrician under a general assignment gains an exclusive rights to perform certain duties by some form of prescriptive rights is not a tenable one.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1956.