

Award No. 2386
Docket No. 2199
2-GN-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY CO.

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carmen William H. Jordan and Joseph V. LaBono were unjustly withheld from a bulletined position on the Interbay Repair Track on which they were the senior bidders, from December 4, 1951 until March 25, 1952.

2. That accordingly the Carrier be ordered to:

a) Compensate Carmen William H. Jordan and Joseph V. LaBono for 8 hours each at time and one-half rate for rest days on jobs denied which days they were forced to work on other jobs as regular work days during the aforementioned period.

b) Compensate Carmen William H. Jordan and Joseph V. LaBono for 8 hours each at straight time rate for rest days on the other jobs they were forced to remain home on, which were regular working days on jobs denied during the aforementioned period.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, on November 28, 1951 at Interbay, posted a bulletin advertising two vacancies, a copy of which is submitted herewith and identified as Exhibit A.

On November 30 and December 3, 1951, Carmen William H. Jordan and Joseph V. LaBono, hereinafter referred to as the claimants, placed bids on the vacancies advertised by the carrier on November 28, 1951, copies of which are submitted herewith and identified as Exhibits B and C.

The seniority date of the claimants are:

Carman William H. Jordan	6/28/51.
Carman Joseph V. LaBono	9/ 1/51.

Claimant Jordan, prior to December 4, 1951, was assigned to a relief position as following: Thursday, Friday and Saturday on the third shift;

carrier. The transfer must be made within a reasonable time. What is a reasonable time must be determined from the facts and circumstances of the particular case."

In the instant case the carrier was confronted with exigencies arising from extraordinary conditions beyond its immediate control. The carrier did not arbitrarily or capriciously withhold the assignment of LaBono and Jordan to the jobs they had won by virtue of being the senior bidders. The carrier had not anticipated that the carmen who were absorbed when the Great Northern took over the Pacific Coast Railroad would be unqualified to occupy inspectors' positions. The carrier sought a remedy to the situation through conference and negotiation with the organization in order to arrive at a satisfactory arrangement. As soon as all parties were satisfied as to procedure, compliance with rules, etc., the claimants were allowed to move onto the jobs they had won by bulletin.

In summary, therefore, the carrier holds that it did everything possible in complying with carmen's agreement rules in providing relief for the claimants and should not be penalized for following proper procedures which included conferences and negotiations with the employes' organization, obtaining approval of employes' organization, upgrading of members of employes' organization, etc., and especially should not be penalized when Claimants LaBono and Jordan suffered no loss in earnings and were placed on the jobs they had won by bulletin by virtue of seniority as soon as men were made available with whom carrier was able to replace them (claimants). Carrier holds further that it operated in good faith in providing relief to claimants and was as reasonable as was possible due to the circumstances surrounding this situation relative to the time consumed in making the assignment of the claimants LaBono and Jordan to the jobs they had been awarded on the Interbay Repair Track.

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.

This claim is made in behalf of Carmen William H. Jordan and Joseph V. LaBono. It is contended carrier improperly withheld Jordan and LaBono from bulletined positions at its Interbay Repair Track, on which they had been the senior qualified bidders. The period for which such claim is made is from December 4, 1951 to March 25, 1952.

On November 28, 1951 carrier advertised by bulletin two (2) jobs for car repairmen on its Repair Track at Interbay, setting out therein the hours of service, work and rest days and the rate of pay thereof, stating therein that bids would be received therefor until 3:00 P. M. on December 4, 1951. Claimant LaBono submitted his bid for the positions to the carrier on November 30, 1951 and Claimant Jordan did likewise on December 3, 1951. They were the senior bidders.

Rule 4(a) of the parties' controlling agreement provides:

"New positions or vacancies of more than thirty (30) days' duration will be bulletined for a period of five (5) calendar days, and the senior qualified applicant will be assigned thereto within four (4) calendar days after close of bulletin. Applicants for bulletined positions must submit their bid to the proper officer in writing and

duplicate copies of all bids will be delivered to the Local Chairman of the craft by the applicant before the close of bulletin."

It will be noted this rule provides: "the senior qualified applicant will be assigned thereto within four (4) calendar days after close of bulletin." Claimants were not placed on the positions until March 25, 1952, carrier filling these positions in the meantime with Carmen Mike Koncher and H. Hiday. Both Koncher and Hiday were junior to claimants.

The factual situation giving rise to the use of Carmen Koncher and Hiday on these bulletined positions from December 4, 1951 to March 25, 1952 is as follows. Effective as of November 1, 1951 carrier assumed active control of the Pacific Coast Railroad. In connection with doing so it agreed to give the carmen thereof, effective November 1, 1951, the same seniority date at its Interbay Yards as they held on the Pacific Coast Railroad. Included were Carmen Koncher and Hiday who, as already stated, had seniority junior to claimants. Under the Washington Job Protection Agreement governing the consolidation, carrier was obligated to see that Koncher and Hiday received their pay whether it used them or not. In an endeavor to give them jobs carrier bulletined the two (2) jobs at Interbay. However, when claimants bid on these jobs carrier became aware of the fact that both Koncher and Hiday were not qualified to fill the relief car inspector jobs which would be vacated by claimants if they were placed on the jobs they had bid for. Consequently carrier placed Koncher and Hiday on these bulletined jobs until two (2) carmen helpers were upgraded, as the parties' Advancement Agreement provides may be done, to fill claimants' relief car inspector positions, which was March 25, 1952. Thereupon claimants were placed on the bulletined positions and Koncher and Hiday given carmen's work they were qualified for and capable of performing.

While carrier undoubtedly found itself in a difficult position because of Koncher and Hiday's limited qualifications such fact was not the fault of claimants. Their rights were fixed by Rule 4(a) and they were entitled to the benefits thereof.

As to the form of the claim we think, under the circumstances, it correctly fixes the claimants' rights to compensation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.