

**Award No. 2620
Docket No. 2480
2-AT&SF-EW-'57**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the carrier assigned Mr. J. L. Hollinger to the position of Electrical Foreman, Coast Lines, Shop Extension Electrical Department.

2. That accordingly the carrier be ordered to:

(a) Remove J. L. Hollinger from the position of Electrical Foreman, Coast Lines, Shop Extension Electrical Department.

(b) Assign an electrician to the position of Electrical Foreman who meets the requirements specified in the current agreement.

(c) Reimburse the electrician so assigned for the difference between the compensation he received as electrician and the compensation he would have received had he been assigned to the Foreman's position, since the date J. L. Hollinger was assigned to the position of Electrical Foreman.

EMPLOYEES' STATEMENT OF FACTS: J. L. Hollinger was assigned to the position of electrical foreman in the Shop Extension Electrical Department, Coast Lines, on or about August 1, 1955.

We appreciate your directing attention to any practice which it is thought creates a hazard of accident as I am sure that everyone concerned knows of the insistence of the Company on employes, both workmen and supervisors, to observe and conscientiously comply with the rules and regulations with respect to safety.

Yours truly,

/s/ L. D. COMER"

POSITION OF CARRIER: It is the carrier's position that the assignment of Mr. J. L. Hollinger as electrical foreman, Coast Lines, complies fully with Rule 17 of the current agreement. Rule 17(c) of that agreement states "Technical school graduates in service holding degrees in Mechanical or Electrical Engineering will be eligible for assignment as Gang Foreman or Foreman." Mr. Hollinger is a technical school graduate, holding a B.S. in Electrical Engineering and he was in the service of the carrier at the time selected for this assignment. Contrary to what is proposed by the employes, we may not disregard or ignore other sections of the rule to make paragraph (a) thereof controlling of the entire rule, nor may we interpret paragraph (a) to mean that **only mechanics** holding seniority in the craft will be eligible for assignment as gang foremen and foremen. Such would constitute distortion of the meaning of the words in that paragraph whereas it is well known that words in an agreement should be given their ordinary and common and usual meaning. Furthermore, such erroneous interpretation as proposed by the employes would obviate entirely or make meaningless, as so many useless words, paragraph (c) of that rule. It is well recognized in contract law that words of an agreement shall not be ignored and treated as surplusage if they are susceptible of being given a meaning consistent with the other language in the section in which they occur. There can be no doubt about the fact that the parties intended paragraph (c) to have full force and effect or they would not have taken pains to set out that provision clearly and unambiguously, in paragraph form within the rule.

The carrier has established that the assignment of Mr. Hollinger complies fully with the agreement and that because of his training and actual experience on the large territory involved prior to this assignment, his qualifications for the position greatly exceeded those of a mechanic who might have been selected from a given location who would have familiarity with only one shop or a local area in contrast to the experience and training Mr. Hollinger had acquired with respect to the entire territory before his assignment.

The carrier petitions the Board to decline the claim on the basis that Mr. Hollinger's assignment complies fully with the current agreement and that he was by far the most qualified candidate for the position.

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 carrier assigned an employee of its choice to the position of Electrical Foreman in the Shop Extension Electrical Department, Coast Lines, on or about August 1, 1955.

The employees complain stating that the carrier's appointee, while employed by the carrier at time of appointment, did not hold seniority as an electrician in any department of the carrier. They cite Rule 17(a) reading:

"(a) Mechanics holding seniority under this Agreement and in service of the Railway Company in any capacity will be given preference for promotion to positions of Gang Foreman and Foreman. In filling such positions, employees selected will be from the respective crafts of the employees over which they will exercise supervision."

The Organization advanced the names of three electricians who, it contended, were capable of filling the position and who were within the group contemplated by the above Rule 17(a).

The carrier's appointee holds a Bachelor of Science degree in Electrical Engineering from the University of Missouri. The carrier's initial submission shows in detail this man's service experience with this carrier. The submission further shows facts which clearly distinguishes this Foreman position from the usual Gang Foreman or Lead Foreman positions, the tour of duty and responsibility of which may be limited to a gang, shop or local area.

The occupant of this position has under his direction and supervision ten gangs each headed by a lead workman comprising a total of sixty men working out of nine different headquarters located in three states. The appointee previously was the assistant to the then occupant of the position in question.

The carrier justifies its action by pointing to Rule 17(c) which provides:

"(c) Technical school graduates in service holding degrees in Mechanical or Electrical Engineering, will be eligible for assignment as Gang Foreman or Foreman."

The employees contend that to be a qualified electrician one must have had at least four years' practical experience, and carrier's appointee did not possess that experience. We find no such time requirement in Rule 17 which rule concerns the subject of filling vacancies of foreman. It appears only in Rule 91 which rule sets forth electrical worker's qualifications, hence the point is irrelevant.

Carrier's appointee was eligible for the position in question under Rule 17(a) quoted above. While it is true that preference was to be given mechanics holding seniority under the Electrician's Agreement there is nothing to show in this submission that carrier failed to give proper recognition to that factor. The carrier made a detailed outline of what it required of the occupant of this particular Foreman's position. That it carried responsibilities beyond the usual duties of positions so denominated, seems clear. Carrier further made full disclosure to the Division of its appointee's qualifications and the reasons why he has qualified for the position.

All that we know about the Employees' candidates is the assertion that two of them are graduate apprentices of the carrier and should have been taught the fundamentals, such as reading plans, etc. and that any of the three

could pass licensing examinations. Further, that the third contender was for many years the Coast Line Electrical Inspector who came in contact with all power companies, municipal, county and state bureaus and possessed a complete knowledge of electrical codes and safety orders.

From the record before us we can not say that the carrier acted arbitrarily and in gross abuse of its discretion in selecting the occupant for the position in question. Only by so finding could we justify interference with its action.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September, 1957.