

Award No. 3176

Docket No. 2929

2-GN-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The current agreement was violated when the Carrier failed to bulletin the position of Power Plant Helper at Jackson Street Shops, thus, depriving Laborer Marlin Hammer the right to exercise his seniority rights to fill the aforesaid position.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe the difference in rate of pay as between Shop Laborer and Power Plant Helper until such time as Claimant is rightfully placed on position as Power Plant Helper retroactive to November 1, 1956.

EMPLOYEES' STATEMENT OF FACTS: Marlin Hammer, hereinafter referred to as the claimant, is employed as a laborer at Jackson Street Car Shops, St. Paul, with a laborer seniority date as of July 2, 1953, and does not hold seniority in any other craft or department.

A vacancy for the position of power plant helper existed at Jackson Street Shops as of November 1, 1956, and the Great Northern Railway Company, hereinafter referred to as the carrier, instead of bulletining this vacancy, assigned same to one Donald Hanson, whose seniority date as a laborer is September 2, 1955, and who also holds seniority as a carman helper.

The claimant is the oldest laborer without craft helper seniority who can qualify for the position of power plant helper under agreement rules.

The carrier prior to the instant dispute bulletined new jobs or vacancies of power plant helper which is confirmed by Exhibits A and B attached to the employes' submission in Second Division, Award 2068; and Bulletin 23 dated April 6, 1955 at Hillyard Shop, Bulletin dated July 26, 1955 at Dale

Award No. 1181:

" . . . The Railway Labor Act outlines procedure to be followed in the handling of intended changes in agreements affecting rates of pay, rules or working conditions (see Sec. 6).

"If in the judgment of the employees a new rule should be negotiated, the procedure outlined in the Railway Labor Act should be followed.

"The claim of the employees in its present status cannot be decided by the Adjustment Board as it does not grow out of the interpretation or application of the agreement concerning rates of pay, rules or working conditions (see Sec. 3, First (i), Railway Labor Act)."

Award No. 1386:

"The Division concludes that such agreements control the claims made herein and require a denial thereof. To hold otherwise would require the Division to revise the old or make a new agreement which it has no right or authority to do."

Award No. 1468:

" . . . Any extension of the scope of the application of the differential must come from negotiation and not by an interpretation which could only have the effect of revising the agreement, a function this Board does not possess."

Since it has been shown herein that carrier complied in full with schedule agreement rules in the selection and assignment of Laborer Hanson to a position as power plant helper, this claim of the employees 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

The issue here is whether the carrier is required by Rule 6 to bulletin power plant helper positions.

Rule 6 in essence provides without exception that new positions or vacancies of more than 30 days duration will be bulletined and senior qualified applicants assigned.

Both parties cite and depend upon Award No. 2068 wherein an employee returned from military service was sustained in his claim that he was entitled to a helper's job which the carrier had bulletined during his absence.

We are of the opinion that so long as the carrier is permitted to judge who is or is not qualified for a trainee position that if a new position or

vacancy of more than 30 days occurs that Rule 6 requires bulletining. To hold otherwise would deny employes an opportunity to exhibit their qualifications.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1959.