

Award No. 3721

Docket No. 3512

2-RDG-BM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Boilermakers)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement was violated when Boilermaker S. Yellen was denied his contractual rights when held from service, Monday, July 7, 1958.

2. That accordingly the Carrier be ordered to compensate Boilermaker S. Yellen eight (8) hours pay at straight time rate.

EMPLOYES' STATEMENT OF FACTS: The Reading Company, hereinafter referred to as the carrier, operates a coal dumper at Port Reading, N. J.

S. Yellen is a regularly assigned boilermaker on the first shift — 7:00 A. M. to 3:30 P. M. — Monday through Friday with rest days Saturday and Sunday.

On Tuesday, July 1, 1958, the carrier posted Bulletin #45 abolishing the position of Boilermaker Yellen effective at 3:30 P. M. Friday, July 4, 1958.

Also on July 1, the carrier posted Bulletin #60 creating new position on 1st shift — 7:00 A. M. to 3:30 P. M. — rest days Saturday and Sunday.

This dispute has been handled with all carrier officials designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement, effective January 16, 1940 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the posting of Bulletin Notice #45, was an attempt on the part of the carrier to deny the employees a chance to qualify for Holiday Pay for July 4, 1958 by abolishing the position so as they would not have a regular position assignment.

Further the carrier posted Bulletin #52 notifying the employees not to work on Friday July 4 and verbally instructed the employees not to report for work on Monday, July 7, 1958.

Employees restored to service under this rule shall be allowed to work not less than four days.

Employees desiring to avail themselves of this rule must maintain their addresses with employing officer.

The Local Committee will be furnished a list of men to be restored to service. In reduction of force the ratio of apprentices shall be maintained.

NOTE: Form for filing address for furlough on page 71."

It is the position of the carrier, as set forth in correspondence quoted hereinbefore, that its actions in the instant claim were clearly not in violation of any of the provisions of the above rules. In accordance with provisions of Rule 27, proper bulletin was posted July 1, 1958 abolishing the boilermaker's position at Port Reading, N. J., effective with the close of tour of duty on July 4, 1958. Likewise, in accordance with provisions of Rule 18, boilermaker's position was reestablished by proper bulletin which expired at 11:59 P. M., July 6, 1958. The Board will note that Rule 18 provides that bulletins shall be posted for a period of five days and will be filled within five days after the expiration of the bulletin. Clearly, under Rule 18, it was proper for carrier to fill the boilermaker's position on July 8, 1958, which was two days after expiration of the bulletin on July 6, 1958.

Carrier desires to point out that there are no rules in the existing agreement preventing the reduction of forces or abolishing of positions for any specified period of time and in the absence of any such restrictive provision in the existing collective bargaining agreement, the Board, in the exercise of its statutory function, should not place the parties to the agreement in a position different from that bargained for.

Under the facts and circumstances and for the reasons presented hereinbefore, carrier maintains that there is no violation of any existing rules or understandings in the instant case. Consequently, carrier submits that the claim of the organization is without merit and respectfully requests that same be denied in its entirety.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The sole position of Boilermaker at Port Reading, held by claimant, was abolished by bulletin effective on close of tour of duty on July 4, 1958, with copy to claimant who was also chairman of his local committee, and by another bulletin of same date the position was reestablished effective July 8th, whereby it remained abolished for one working day only.

"Four days' notice will be given the employes affected before reduction is made and lists furnished the Local Committee."

The majority states the following in the Findings: "By rearrangement of work a position may be abolished without reduction of force or furloughing an employe, but the matter of concern to the employe is whether his position is to be abolished." We point out that it is also a matter of concern to the employe as to whether or not he will be affected in reduction of force.

It is clearly evident that the claimant was affected in reduction in force and did not receive due notice thereof as provided in the agreement. The award is erroneous. We dissent.

E. W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

J. B. Zink