

Award No. 3888

Docket No. 3264

2-WAB-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O.
(Machinists)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

- (1) That the Carrier violated the terms of the current Agreement when it failed to identify and specify, for the purpose of bidding, the position advertised in Car Shop, Wheel Shop Bulletin No. 1626.
- (2) That the Carrier be ordered to identify and describe on the bulletins the vacancy or new position to be filled.

EMPLOYES' STATEMENT OF FACTS: The Wabash Railroad Company, hereinafter referred to as the carrier, posted Bulletin No. 1626, dated January 12, 1958, in the Car Department at Decatur, Illinois.

The carrier employs at its Decatur Car Department wheel shop a normal force of seven to eight machinists, two first class helpers and three regular machinist helpers. The shop operates on a five day work week, Monday through Friday, with two shifts with two machinists on the second shift. These two machinists work on different jobs or machines as the need arises.

On the first shift there are normally employed five to six machinists working the following jobs or assignments:

“Wheel Lathe
Engine Lathe
Shaper
2 Wheel Center Boring Mills
2 Axle Lathes
Inspecting and testing wheels and axles
Repairing roller bearings
Bench, repairing jacks, etc.”

The two first class helpers are assigned to and operate the two axle lathes and by agreement will be replaced by machinists when they leave the service.

As to Award No. 1440:

An examination of this award reveals that the facts therein involved had no similarity whatever to the issues involved in the instant case. Award No. 1440 dealt with a situation in which "occupational designation" was the issue. All the positions therein involved were abolished and re-advertised with a different designation of occupation. Again, no such conditions exist in the instant case and the findings in Award No. 1440 are not pertinent.

As to Award No. 1574:

An examination of this award shows plainly that the circumstances therein involved bear no likeness to the situation and issues in the instant case. The carrier involved in Award No. 1574 was a terminal company handling the equipment of several railroads and the carrier had the problem of providing workmen who were familiar with, and qualified to work on, different types of equipment peculiar to the several railroads. In an effort to solve the problem an agreement or understanding was established between the carrier and the employes to the effect that bulletins would carry a letter symbol to indicate which railroad's equipment would be mainly involved in the work of a given position. Some four years later the carrier saw fit to take action, described in the findings as "unilateral," to omit the letter symbols. It was this action which gave rise to the dispute and in its findings this Board ordered the carrier to **restore** the letter symbol when bulletining positions involved in that case.

In the instant case, there has been no separate agreement or understanding regarding the bulletining of machinists' positions in the machine shop, nor has there ever been any change in the manner in which those positions were bulletined. On the contrary, work performed in the machine shop is substantially the same as it has always been over a long period of years; the practice of assigning work to machinists in that shop is materially the same as it has always been; and Bulletin No. 1626 conformed precisely to past procedure at that location with respect to advertising machinists' positions for bid.

Attention is directed to Second Division Award No. 1904. The carrier submits that the circumstances and issues in that case are relevant to the instant case. Particular attention is directed to the following which appears in the findings of Award No. 1904:

"There was and had been no specialization of work on that shift and the different types of work were all carried on in the same Diesel Shop, (here Machine Shop), as identified in the Bulletin."

The contentions of the committee should be dismissed and the claim 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.

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

Bulletin No. 1626, which was issued under date of January 12, 1958, advertised a vacancy in a first trick machinist position in the Carrier's Car Department Wheel Shop (Machine Shop) at Decatur, Illinois. The bulletin listed the scheduled hours, regular work days and wage rate of the position, but did not specify any **particular** work or operations within the machinist craft.

The Organization contends that by failing to identify the work content of the advertised job the Carrier violated Rule 14 of the agreement, in that the employes were deprived of the effective right to bid for a job they prefer. The Organization states that no bids were received from the existing machinists because of their lack of knowledge of the duties of the bulletined position but that after the position was filled by a new hire it developed that the duties were to operate a boring mill. The Carrier responds that it complied with Rule 14 in all respects and that Bulletin No. 1626 was issued in the same manner and form previously followed at the shop in question.

Rule 14 of the controlling agreement provides:

"When new jobs are created or permanent vacancies occur in the respective crafts, the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or vacancies.

All new jobs created or permanent vacancies where a higher rate is involved, will be bulletined. Bulletins must be posted five (5) days before such vacancies are filled permanently. Employes desiring to avail themselves of this rule, will make written application to the official in charge and a copy of the application will be given the local chairman by the official in charge."

At the time this dispute arose eight machinists were employed in the Wheel Shop, six of whom were assigned on the first trick and two on the second trick. All of the machinists were scheduled on a Monday through Friday work week. Most of the work performed there by machinists is in connection with wheels and axles but a variety of other work is performed, including machinery maintenance, shop truck maintenance, repairing tools and jacks, etc. The shop equipment includes a wheel lathe, an engine lathe, a shaper, two wheel center boring mills, two axle lathes and inspection and testing devices. Two first class machinist helpers were operating the axle lathes at the time involved but journey-men machinists also operated these lathes.

It is established that the Carrier has never specified particular work or operations in the bulletins issued for machinist vacancies in the Car Department Wheel Shop. Management states the practice, and its own intention, have always been to avoid a condition whereby machinists would acquire individual rights to any particular kind of work — thus impairing the efficiency of the overall operation. The Carrier further states that no specific kinds of work in the shop require full time performance on the part of a machinist.

The organization declares there are "several jobs that operate full time * * *" and refers to certain individual employe statements to this effect. The Organization states it does not contend, however, that because a machinist is assigned to a job he cannot be removed from it under any circumstances. Reference is made to the fact that the bulletins which

the Carrier issues for machinist vacancies in the Locomotive Shop at Decatur customarily identify the content of the job in such terms as "Machinist — Air Job — Along with other Machinist's Work." The Carrier replies that the Locomotive Shop has about seventy-five machinists employed in the several divisions customarily found in a large locomotive shop, that any one of these divisions customarily has more machinists than the entire Car Department Wheel Shop, but that even so, the work in the various subdivisions is not specialized to the extent that individual machinists are assigned exclusively to particular kinds of work.

We have previously said, as a general proposition, that a prime objective of bulletining positions is to enable employes to exercise their seniority rights in bidding for positions they consider desirable. In order to know whether a position is desirable an employe must be given sufficient information about it when it is bulletined. (Award 1574) On the other hand, we also have said that in the absence of any rule to the contrary, a carrier may assign work in any manner it desires in order to have it most efficiently performed. (Award 2148)

In the instant case the evidence indicates that the Wheel Shop is a comparatively small establishment in which the different types of work performed exceed in number the complement of machinists employed. A few operations are run rather consistently but none of them are conducted without interruption. There are other types of work that arise more or less sporadically. It would be impractical to provide by bulletin or otherwise that each machinist in the shop specializes in a certain type of work and may perform other work only if his "specialized work" is not available. To provide that only certain machinists are "specialists" but others are not would be an unsatisfactory situation, in our view. If the bulletins were to list all of the major types of work done in the shop, there would be no more identification of the nature of the advertised job than is now carried in the bulletins.

In effect, the bulletins historically issued for vacancies in the Wheel Shop indicate that the successful bidder may be assigned to any type of work arising in the shop. There is no express language in Rule 14 which requires the Carrier to specify the particular or normal duties of an advertised position. We think the traditional practice of omitting a specification of duties from Wheel Shop machinist bulletins, in contrast to even the limited identification of work contained in bulletins issued in the Locomotive Shop, represents mutual recognition by the parties that the operational requirements in the Wheel Shop do not lend themselves to the change in Wheel Shop bulletin procedure which the Organization urges in the subject claim. The claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1961.

LABOR MEMBERS DISSENT TO AWARD NO. 3888

The question involved in this dispute is the job description to be incorporated in a bulletin for a machinists vacancy.

Rule 14 of the controlling agreement between the parties to this dispute contains language similar to Rule 18 of the National Agreement in effect during the period of the United States Railroad Administration — it was interpreted as follows:

“Concerning the question raised as to whether or not bulletins of new jobs or vacancies existing should specify what constitutes a particular job or vacancy, **will advise it was the purpose of this rule to provide that the bulletin would give sufficient information concerning the vacant jobs.**” (Emphasis ours.)

In Award 1440 of this Division with Referee F. M. Swacker sitting as a Member thereof, the question of improper description of carmen's jobs was before the Division. In its award it had this to say in part:

“ * * * The organization now is apprehensive that under the present occupational description the carrier would be free promiscuously to use the men with a result that their seniority would, in effect, be worthless to them. The employees illustrate that with no more designation or description of the job than the general craft name, the carrier could shift men from one job to another at will. The complaint is that the new bulletin is entirely too vague, and their distinct jobs susceptible of further description than merely the general craft name. The inspector jobs are, of course, preferable to the car repair jobs. From its hours, an employe might bid in what he supposed to be an assignment, the primary function of which was ‘car inspection’ and find himself relegated by his foreman to a ‘repair job’ while the junior man was performing the car inspection work. In this respect the employe's complaint is sound—the bulletins complained of are entirely too vague. There are jobs, the primary function of which is ‘car inspector’ but who may be used on repair work when not needed on inspection. On the other hand, there are jobs the primary function of which is repairs on repair track but who may be used, when necessary for inspection on the train yard tracks. Cumbersome though such a description may seem, the jobs ought to be so advertised and bulletined so that they might be identifiable for purpose of exercising seniority. They should therefore be re-bulletined so that they are identifiable.”

In Award 1440 the rule was interpreted by the Division based on the language in the agreement rule. This Division has said repeatedly that where the rule is clear and unambiguous, practice does not supersede the rule — therefor the majority should have interpreted the agreement rule in conformity with its plain provisions.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink