

Award No. 4232
Docket No. 4020
2-NYC&StL-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

**THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when it arbitrarily assigned other than a sheet metal worker to fill the position of lamp repairman.

2. That the position of lamp repairman be assigned to Mr. Carroll May, who on January 11, 1960, submitted the one and only bid from the Sheet Metal Workers' craft for this position as advertised in Shop Bulletin No. 1-60.

3. That Sheet Metal Workers Ralph King and Clarence Wing be additionally compensated, equally between them at the time and one-half rate for all time said position is and has been filled by other than a sheet metal worker.

EMPLOYEES' STATEMENT OF FACTS: At Bellevue, Ohio, the carrier has a repair shop which comes under the supervision of the engineering department. The carrier maintains a position of "Lamp Repairman" at that location.

Prior to his death Mr. Lyle B. Roe, sheet metal worker, held the position of lamp repairman at the Bellevue, Ohio shop.

On January 4, 1960, bulletin No. 1-60 was posted at the Bellevue shop, advertising the position of lamp repairman. On January 11, 1960, sheet metal worker Carroll May, submitting the one and only bid from the sheet metal workers' craft, requesting the position of lamp repairman in accord-

The claim in favor of King and Wing is obviously one for penalty, something which is not contemplated by any rule of the agreement.

In the next to last paragraph of his letter of June 18, 1960, the general chairman has this to say:

"We would be much obliged if you would explain, how, in your opinion the appointment was made in accordance with Rules 19 and 26. We would also like to point out to you that it would be our opinion that Rule 23 allows employees to transfer from one seniority district to another in a case such as this. We are not familiar with any rule that allows management to arbitrarily transfer an employee from one class or craft to another."

The answer to the employees' question is this: The appointment was made strictly in accordance with the applicable rule, which is Rule 26. Rule 19 does not cover appointments. It provides that seniority of employees will be restricted to their class and to the territory or shop over which one supervisor has jurisdiction. If it had any application here at all it would support the action of the carrier and make the position of the employees untenable. The employees first insisted that a man be assigned who was neither in the same seniority district nor in the shop over which the same foreman has jurisdiction and later made claim in favor of other employees also not in the same seniority district or shop.

While Rule 23 may have had some indirect application to the case of Carroll May, that point need not be argued since his claim was abandoned and he is no longer in this service. The rule has no application to the claim of King and Wing. The rule definitely contains an employee option. By their refusal to bid on the advertised position, the claimants are on record as having elected not to exercise such option.

For the reasons contained herein the claim lacks merit in all its parts and should therefore 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.

Under Rule 38 lamp repairing is classified as sheet metal workers' work.

Under Rule 17 seniority is confined to the seniority district and the class in which employed; under Rule 23(a), except for temporary service, employees will not be transferred to another seniority district unless they so desire, which necessarily means that they may be so transferred to fill vacancies if they desire. Claimant May's written bid for the position expressed his desire for the transfer.

All three claimants were sheet metal journeymen in the Bellevue District although none of them held seniority as lamp repairman or in the Bellevue Shop. Wicker, to whom the position was awarded, held seniority in the Bellevue Shop, but as a carman helper, and not as a lamp repairman nor in other class of work assigned to sheet metal workers by Rule 38.

While none of the three sheet metal workers would have been entitled to the position as against a bidder who was on the lamp repairmen's seniority list there, each of them, unless otherwise disqualified for that particular work, certainly had a better right to it than Wicker, who was a member of another craft. Apparently Wicker no longer holds the position, so that third party notice is not required.

Claimant was the only sheet metal worker bidding for the position; there is no contention that he was not qualified for it; and he was and still is entitled to the position unless it has been otherwise properly filled with his assent, or is no longer desired by him.

The only basis stated for a claim on behalf of claimants King and Wing was that "if the position was filled at time and one-half these two men would be the most available to fill the position * * *." But it was a regular bulletined position, claimant May was a qualified bidder for it, and there was no occasion to fill the position on an overtime basis.

AWARD

Claim 1 sustained.

Claim 2 sustained subject to the provisos noted in the findings.

Claim 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.