

Award No. 4294

Docket No. 4105

2-IC-EM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current Agreement was violated when the Illinois Central Railroad hired A. A. Woods as an electrician.

2. That, accordingly, the Carrier be ordered to remove from the electricians seniority roster and take out of service A. A. Woods.

EMPLOYES' STATEMENT OF FACTS: A. A. Woods is employed by the Illinois Central Railroad as an electrician at Markham Shops, Chicago, Illinois.

Carrier accepted A. A. Woods as a duly qualified electrician.

This dispute has been handled with all carrier officials designated to handle such matters, all of whom refused to adjust the matter satisfactorily.

The current agreement of April 1, 1935, as amended 1943 and 1949 is controlling.

POSITION OF EMPLOYES: Rule 116 of the Working Agreement reads as follows:

"Any man who has served an apprenticeship or who had had four (4) years practical experience in electrical work and is competent to execute same to a successful conclusion . . . will be rated as an electrical worker." (Emphasis ours)

Subject employe was hired by the carrier as a qualified mechanic based on the following references:

1935-1936	H. A. DeVry, Inc.—wireman
1936-1941	Milton Novelty Co.—wireman
1941-1946	Teletype Corp.—wireman and apparatus adjuster
1946-1960	Owner and Manager Dixie Bowling Lanes

Award 8280:

"We have consistently recognized and held that the matter of judging an employe's fitness and ability to perform work required is a function of Carrier alone. (Awards 7909, 7810, 7170, 7070, 7015, and 6829, among many others.)"

Nowhere in the handling of this matter on the property have the employes produced any evidence to support their claim that Mr. Woods was not qualified for the position to which assigned, their sole contention being that he was not classified as an electrician at his former place of employment. The rule requires that an individual must have had four (4) years' practical experience in electrical work. Mr. Woods had in excess of ten years' experience at the time of his employment.

In Third Division Award 7964, the Board stated:

"We have consistently held that the burden of presenting positive and substantive evidence in support of a claim is upon the party seeking its allowance. (Awards 7584, 7362, 7353, 7180, 7179, 6964, and 6748, among many others.)"

Also see Second Division Awards 2006 and 2042.

In view of the failure on the part of the organization to produce any evidence in support of their position that Mr. Woods was not qualified, their request before this Board must be denied. There has been no evidence adduced to show that carrier's action was biased or prejudiced or with intent to circumvent the agreement, and their request is entirely devoid of merit.

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 Organization seeks to have A. A. Woods removed from the electricians' seniority roster and taken out of service on the grounds that he was hired in violation of the Controlling agreement.

Rule 116 reads as follows:

"Rule 116. Any man who has served an apprenticeship or who has had four (4) years' practical experience in electrical work and is competent to execute same to a successful conclusion within a reasonable time will be rated as an electrical worker.

"An electrician will not necessarily be an armature winder."

The question to be determined is whether under the record before us, A. A. Woods was hired in violation of this rule.

The record clearly indicates that Woods had more than four years' practical experience in electrical work, and further shows that his foreman is satisfied with his work as an Electrician. (Cf letter from J. Beno at P. 2 of Carrier's submission.)

The Organization maintains that the experience was not of the diverse nature called for under the Electricians' Classification of Work Rule (Rule 117).

Rule 116 does not indicate what the practical experience should be, but the Carrier having submitted evidence of more than four years' practical experience and of competency to execute electricians' work, we cannot hold that it violated the Rule in hiring A. A. Woods.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1963.