

Award No. 4449
Docket No. 4430
2-McCloud-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O.
INTERNATIONAL ASSOCIATION OF MACHINISTS

McCLOUD RIVER RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier's arbitrary unauthorized action in unilaterally appointing Machinist R. Collier to Position of Lead Machinist on March 16, 1962, without in any manner complying with procedures outlined in applicable provisions of the parties contract for bulletining and assignment of New Jobs, was improper, in violation of the collective bargaining contract.

2. That accordingly, the Carrier be ordered to additionally compensate Machinist Arthur Johnson (hereinafter referred to as claimant) for the difference between the Machinist hourly rate of pay claimant has received each working date, and that paid Lead Machinist R. Collier, commencing with the date of May 10, 1962, and continuous therewith until violation of the collective Agreement is discontinued and applicable provisions for bulletining and assignment of positions subject to said Agreement is complied with.

EMPLOYES' STATEMENT OF FACTS: The record establishes that carrier employed Machinist R. Collier as machinist on February 13, 1962 at its McCloud diesel shop, McCloud, California.

On March 16, 1962 carrier unilaterally appointed Machinist R. Collier to duties and a position identified as lead machinist.

Positions of lead machinists — leading working mechanics — are subject to and covered by specific, unambiguous provisions of the current agreement, and employes assigned to such positions in accordance with applicable provisions of the controlling agreement, have negotiated seniority and other service rights thereunder, including contractual right to perform mechanics' work of their respective craft while occupying such positions. No dispute appears in the record regarding these facts.

(d) Should the Board find for the claimant, rate adjustment should be made in compliance with Rule 36 on a basis of actual hours worked by claimant Johnson, not in difference in pay received.

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.

Machinist R. Collier was hired on February 13, 1962, and worked at the Carrier's Diesel Shop at McCloud, California.

On March 16, 1962, the Carrier appointed Machinist Collier to a Lead Machinist's position and the Organization protested that Carrier's action violated Rules 13(a) and 36 of the controlling Agreement—which is dated February 17, 1961.

The Organization contends that:

1. Rule 13(a) requires that all new jobs must be bulletined;
2. the Carrier was without authority to appoint indiscriminately an employe of its choice to perform duties specified in Rule 36 and that such action was in contravention of both Rules (13(a) and 36;
3. had the Carrier complied with the above Rules, Claimant Arthur Johnson, a competent machinist, would have bid on and would have been assigned to Lead Machinist position in accordance with his (Claimant's) seniority.

The Carrier contends that:

1. "Although assignment and posting of Mr. Collier's position was made March 12, 1962 no claim or grievance was presented until July 4, 1962, some 114 days later, 54 days beyond the 60-day limit;
2. The assignment cannot be considered a 'continuing violation' under paragraph (f) Rule 25 for no new assignment or reassignment has been made;
3. the Carrier did not violate Rule 36 in making an assignment on other than a seniority basis, because the right to choose men to direct the work force remained with management."

The pertinent part of Rule 13(a) of the controlling Agreement reads as follows:

"New jobs * * * will be bulletined for five (5) days * * * Senior employes making application shall be assigned within forty-eight (48) hours after closing date of vacancy notice. * * *"

Neither the Carrier's nor the Organization's Ex Parte Submission contains any evidence of the claim's development and progress on the property. Therefore, the Board has no evidence to indicate that the 60 day time-limit question was raised on the property. It is true that the Carrier raised that question in its Ex Parte Submission, but the Board holds the question was not timely and properly raised and, therefore, it is unacceptable.

It is a fact that the positions of Lead Machinists are covered by the controlling Agreement. It is also a fact that Rule 13(a) provides that "new jobs" must be bulletined, and the record indicates that the Carrier failed to do so. Consequently, the Carrier violated the Agreement.

The Carrier's plea that it had the management right to select a Lead Machinist on the basis of "leadership qualities" is unacceptable, because the Rule, supra, does not reserve or grant to the Carrier such a right.

Accordingly, the Board must rule in favor of the Organization and grant to the Claimant the additional sum of six cents per hour for each hour the Claimant has worked between May 10, 1962 and up until the time the violation of the Agreement is corrected.

AWARD

Claim sustained in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST. Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1964.