

Award No. 4839

Docket No. 4707

2-CRR-CM-'66

**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. 44, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
CLINCHFIELD RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

(a) That the Carrier violated the terms of the Current Agreement when it failed to identify and specify for the purpose of bidding, the positions advertised in the carmen's craft.

(b) That the Carrier be ordered to re-advertise all vacancies or positions which have been erroneously bulletined and to identify and describe on the bulletins the vacancy or new position to be filled.

EMPLOYEES' STATEMENT OF FACTS:

(1) That the Carrier is currently issuing bulletins of vacancies or new positions in a manner which is in violation of our agreement. Bulletins are presently listing the scheduled hours, regular work days and wage rate of position but do not specify particular work or operations to be performed within the respective craft.

(2) That by failing to identify the work content of the advertised position the carrier is depriving the employees' of their effective seniority right to acquire the more desirable positions.

(3) This dispute has been handled with all carrier officers designated to handle grievances, including the highest designated officers, with the result that all of them have failed to adjust it.

(4) The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYEES:

(1) At the present time the carrier has in the Erwin Car Shop approximately fifty (50) carmen engaged in rebuilding open top hoppers. The majority of these positions have been bulletined as "General Carmens' duties at heavy repair car shop and such other carmans' duties as may be assigned." This manner of bulletining jobs as "General Carmen's duties" does not permit the senior employe to exercise his rights in that he has the same bid-in assignment as the junior employe and is more or less at the mercy of the foreman in charge as to where he is going to work

position advertised and to properly identify it as well as to specify the duties. The bulletins show in every respect all the information an employee needs to determine its desirability to him.

The Carrier has, in all respects, fully complied with the agreement and we respectfully request this Board to so find and deny the claim.

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.

This claim arose at the Carrier's Heavy Repair Car Shop at Erwin, Tennessee. Previously the general practice in bulletining any position or small group of positions had been to state its definite primary nature and location, adding the catch-all clause "and such other carman's duties as may be assigned." But by a change of practice in about 1963 the bulletin was generalized so as to read: "General repairs to freight cars," or "General carmen's duties at heavy repair car shop," followed by the catch-all clause. With regard to vacancies the name of the preceding incumbent continued to be shown.

The nature of the controversy appears from the General Foreman's letter of May 14, 1963 to the General Chairman, in which he said:

"I am sure that you are aware of the fact that a number of the men on heavy repair took advantage of the fact that they were holding a job which had been bulletined for the performance of specific duties and 'such other carman's duties as may be assigned.' The result was that it required too long to place men in position where the regularly assigned man was absent; do this according to seniority as the men insisted on; and at the same time get men on each job who could and would do a satisfactory job and be able to turn out a reasonable amount of work.

This situation has crippled our shop performance to a certain extent for some time in the past. There are a certain number of positions in the steel car shop—welding and fabricating work to mention two—which every man on the roll at that shop is not able to perform satisfactorily although they may be senior to some other men who are able to turn out an excellent job on such positions.

The present practice of advertising these jobs as 'General repairs to Freight cars' is almost a necessity if we are to get production and a quality of work which will satisfy our management. Actually, I am sure that in the end this will work to the advantage of the men as well as to the advantage of the company.

There are, of course a few jobs on heavy which will continue to be bulletined stating the specific duties to be performed. I have in mind the welding jobs which are regularly assigned, certain work in the fabricat-

ing shop, etc. In fairness to the Railroad Company and in the interest of production and work quality I regret that we must continue to bulletin most of the positions at the steel car shop as we are now doing."

The Carrier's position thus is that with the exception of relatively few positions, as in welding and certain fabricating operations, it must continue to bulletin most jobs as "general repairs to Freight cars," etc.

The Employee's position is that this violates the employee's seniority right under Rules 10 and 17 to be accorded his "preference in filling such job or vacancy that may be desirable to him;—that except to the extent afforded by the name of the last incumbent it does not give him sufficient information to determine what job or vacancy may be desirable to him; and that in fact it does not permit him to select any desirable phase of his work according to seniority, but permits foremen to assign junior members to work preferred by their seniors.

It seems apparent that the new practice infringes seniority rights in both respects complained of, and that the Carrier does not consider that even the stated name of the last occupant of the advertised position gives the successful bidder a preferential right to any definite phase of freight car repair work, such as dismantling, fitting up, rivet crew service, or cleaning and repairing of triple valves or of air brake pistons, as under former bulletins. In that connection we approve the following statement of this Division in Award No. 2148:

"When a position has been established by bulletin the company cannot unilaterally substantially change the duties thereof. However, this does not mean that by establishing a position and assigning certain duties thereto they become permanently affixed thereby. Carrier can reorganize its work whenever it finds necessity for doing so, and may change the duties of a position but, when it does so, it becomes a new job for the purpose of Rule 42 and must be bulletined as therein provided, otherwise seniority would have little value and employees, by reason thereof, would not have the choice of work to which their seniority entitles them. The foregoing would not apply if the changes were of a minor character and incident to the normal duties of the position."

Many awards of this Division have upheld the employees' right to sufficient bulletin information to identify the jobs or vacancies desirable to them. See Awards. No. 962, 1440, 1574, 2148, 2294 and 3888. In fact, the Carrier concedes that bulletins "should show sufficient information to enable the employee to identify the job and to determine whether or not the position is desirable to him." Obviously this must include more than such work descriptions as "general repairs to freight cars" or "general carman's duties at heavy repair car shop."

Some positions are necessarily more general than others; but to give full effect to seniority rights all bulletins should be as specific as reasonably practicable and as traditionally worded. At the same time, the Employees should conform to the Carrier's right to divert their services incidentally to other carman's duties when necessary or desirable for the efficient performance of work and utilization of their time. With such mutual appreciation and observance of each other's interests and needs, prior bulletining practices should be resumed.

This Board cannot direct the parties in their work; but we hold that the descriptions of bulletined positions should be as above stated to accord with the Agreement, and we remand the subject matter of this dispute to the duly authorized

representatives of the parties for adjustment not inconsistent with these Findings.

A W A R D

Claim 1 sustained to the extent indicated in the Findings.

Claim 2 disposed of in accordance with the last paragraph of the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.