Award No. 4845
Docket No. 4724
2-C&O-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. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chesapeake and Ohio Railway Company violated the current agreement, particularly Rule 34, when they utilized and used Carman Painter Apprentice and working as Carman Tentative Painter, Charles D. Bustetter to fill a temporary Painter Foreman Vacancy, May 27 through June 7, and June 11 through June 14, 1963. Russell Car Shops, Russell, Kentucky.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to additionally compensate Carman Painter, M. W. Craft Jr. the difference between the freight carmen painter applicable rate of pay beginning May 27, 1963 through June 7, 1963 both dates inclusive and June 11, 1963 through June 14, 1964 both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operate a shop known as the Russell Car Shops. At this shop freight cars are built, repaired and maintained. The carrier at its Russell Car Shops employs a number of painters which includes freight carman Painter M. W. Craft Jr., hereinafter referred to as the claimant. Claimant holds carmen painter seniority at the Russell Car Shops as per the provisions of Rule 31 of the shop Crafts controlling Agreement.

On May 27, 1963 and again on June 11, 1963, a painter gang foreman temporary vacancy existed at the Russell Car Shops due to the absence of the regularly assigned painter gang foreman. It was necessary that the temporary vacancy of the painter gang foreman be filled, beginning May 27 and again on June 11, 1963.

The carrier is unable to understand how the employes can place a different interpretation upon the same word at different places in the agreement. They have not, and cannot, argue that Rule 32 quoted in part above applies to "bona fide" men only, as the purpose of "tentative" men is to permit those with adequate skill but who do not have the specified experience to do all work of the craft for the reasons stated in Rule 177. Similarly, they cannot argue that the following excerpt from Rule 33 applies only to bona fide men:

> "In compliance with the special rules included in this Agreement, none but **mechanics** and their apprentices in their respective crafts shall operate oxy-acetylene, thermit, or electric welders."
> (Emphasis ours.)

It cannot be disputed that mechanics tentative do operate the equipment mentioned in Rule 33 without question. The employes here have not attempted to argue that "mechanics" does not include mechanics tentative, showing again that their position in this case is based upon inconsistency. If "mechanic" as used in Rule 33 includes mechanics tentative, then they are also included within the meaning of the same word as used in other rules of the agreement, including Rule 34.

If interpretation of "mechanic" sought by petitioner were to prevail, Rule 177 of the agreement which provides for promotion of apprentices and helpers to carman would be meaningless, as the carrier under Rules 32 and 33 would not be permitted to have carmen tentative do the work which is the purpose of their promotion. Such an interpretation would, to say the least, create an absurdity.

Where the agreement intends to distinguish "tentative" and "bona fide," such adjectives are used. For example, "mechanic tentative" is used at least thirteen times in Rule 177½. In the Understanding to Rule 177 both "tentative" and "bona fide" are used, all of which shows that where the agreement intends to make a distinction, the proper words are used.

Many years ago Gertrude Stein wrote with undeniable logic when she said, "A rose is a rose is a rose . . ." The carrier submits that the same logic applies to the issue in this case of whether or not a mechanic is a mechanic.

The claim should 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 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.

The Carrier argues that the Agreement establishes two varieties of mechanics, namely, (1) "mechanics bona fide", and (2) "mechanics–tentative", both of which are included whenever the Agreement mentions "mechanics" without qualifying words. It argues that if this were not so, mechanics–tentative could not under Rule 32 and others perform mechanics' work.

But the whole purpose of Rule 177 was to meet an emergency situation by relaxing those strict rules; its purpose was to get mechanics' work done

in the face of the shortage of mechanics. In order to "provide sufficient men to do the work" — mechanics' work — it authorizes the advancement for that purpose of apprentices, helpers, and if necessary, new employes, to this special group, which is to continue only until fully trained mechanics again become available. Having been adopted for that express purpose, it necessarily prevails over the earlier rules to that extent, under the conditions to which it refers. Thus the contention is untenable that these mechanic–tentatives must constitutes a new class of mechanics in order to perform mechanics' work. It is therefore necessary to look further for any intent to make a new kind of mechanics out of these specially advanced or employed men.

Rule 177 does not contain either term "mechanic" or "mechanic–tentative". "Mechanic–tentative" was first used in the understanding of April 3, 1948, and later in Rule 177, but "convenience" was stated as the reason for its adoption to describe the group as a whole, which seems natural since the group could consist of perhaps three or four different classes of employes, each of whom would retain his own class seniority, and would revert to that class when the shortage of actual mechanics ended. Certainly the statement that the designation was adopted "for convenience" negatives the inference that it was adopted to designate a new class of mechanics.

The inference is further negatived by the wording of Rule 177, its Note and Understanding, and Rule 177½. In the first place, we find no mention of the term "mechanics bona fide", which the Carrier suggests as a new title for fully qualified mechanics. The term "bona fide mechanics" does appear in paragraph (7) of the Understanding; but "bona fide" is an adjective which means "real", "actual", or "genuine" (Webster's New International Dictionary). It was obviously so used to mean fully qualified mechanics, whom it is natural to characterize as "bona fide mechanics", rather than to confer upon them a new or qualified title. Understanding (7) provides that mechanics–tentative are used only until bona fide, — that is, actual mechanics, — become available. The use of the expression "bona fide" in this connection certainly indicates no intention to re-classify "mechanics" as "mechanics bona fide", or to make mechanics–tentative a new class of mechanics.

This conclusion is confirmed by the Understanding and by Rule 177½, which repeatedly contrast "mechanics–tentative" with "mechanics" — not with "mechanics bona fide". Being directly contrasted with mechanics, mechanics–tentative are manifestly not mechanics, despite their temporary authorization to perform mechanics' work until bona fide mechanics are again available.

Not being mechanics, mechanics–tentative are not eligible to be assigned temporarily to fill the places of foremen under Rule 34. Consequently the Claim must be sustained.

AWARD

Claim sustained.

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.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.