

Award No. 4978
Docket No. 4765
2-GM&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. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly refused to call Carman R. W. Coffey to accompany the wrecking outfit when it was called out to Springfield, Illinois March 23, 24, 25 and 26, 1963.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Coffey in the amount of twenty-four (24) hours and 45 minutes at the time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, maintains a wrecking outfit and crew at Bloomington, Illinois consisting of four ground men, one engineer and one assistant engineer plus one cook.

Carman D. B. Wacker was regularly assigned to the assistant engineer's position up to or about February 25, 1963 when he resigned the job. The carrier advertised this vacancy in bulletin dated February 26, 1963.

Carman R. W. Coffey, hereinafter referred to as the claimant, and R. D. Lanigan, carman helper apprentice temporarily promoted to carman were the only bidders. Claimant's seniority date is December 24, 1958. Mr. Lanigan has no seniority as carman.

On March 23, 1963, twenty-one days after the expiration date of the bulletin, the Bloomington Wrecking Outfit was called out to derailment at Springfield, Illinois. The claimant was not called. Instead, former Assistant Engineer Wacker, who had resigned the position, carrier accepting same, was called out as assistant engineer. The crew was called at or around 8:15 A. M. Saturday, March 23, 1963 and tied up at 11:15 P. M. They worked from 5:00 A. M. to 4:15 P. M., Sunday March 24th; 7:00 A. M. to 6:45 P. M. Monday, March 25th; and 7:00 A. M. to 6:00 P. M. Tuesday, March 26, 1963.

This board has many times recognized the necessity that only qualified employes be used on wrecking crews. In Second Division Award No. 3460, involving claim on The Pittsburgh and Lake Erie Railroad Company and The Lake Erie and Eastern Railroad Company, Referee Francis B. Murphy, because senior employes were not permitted to displace junior employes on a wrecking crew, the board, in denying the claim, held:

“This case arose at McKees Rocks, Pa., when the claimants asked that they be permitted to bump junior men when these senior men were furloughed and their original jobs abolished. The positions in question were as members of the wreck-crew.

The Organization contends that the Carrier in refusing the claimants the right to bump the junior employes violated Rule 40, paragraph (f).

While we agree with the Organization that seniority must be respected, it is necessary for us to permit the Carrier some latitude in this case. Carrier has the responsibility of seeing that the wrecking crew is properly manned and to replace the seven experienced men would leave the wreck master with a completely inexperienced force with the exception of the engineer, cook, and fireman.

Rule 39 (a) specifically deals with seniority and the parties recognized that in bidding on vacancies or new positions, **fitness and ability must be considered.**” (Emphasis ours.)

This claim is an attempt to change the contract by interpretation to mean that the mere fact an employe bids on a position then he must be assigned to the position regardless of his qualifications. Such a construction would completely deprive the carrier of an essential managerial prerogative to determine the qualifications of employes working on a wrecking derrick.

This claim is not supported by the agreement or past practice and is contrary to good judgment, therefore, 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 waived right of appearance at hearing thereon.

The claim is that the Carrier “improperly refused to call Carman R. W. Coffey to accompany the wrecking outfit when it was called out to Springfield, Illinois, March 23, 24, 25 and 26, 1963”; in other words, that it violated the agreement by not calling him.

Rule 148 provides in part:

“When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit.”

The four successive denials on on the property stated as follows:

1. "This will acknowledge your letter of April 8, 1963 claimant 24¾ hours time at time and one-half for R. W. Coffey account his not being used on Bloomington Wreck Train while they were working at Springfield.

I am declining this claim as it is without merit."

2. "After reviewing the matter, I cannot find where there was any violation of the Contract and therefore your claim is respectfully denied herewith."
3. "As you were advised when the matter was discussed, Carman Coffey is not a member of the wrecking crew. There is no proper basis for this claim and it is respectfully denied."
4. "As we discussed in our conference of December 18, 1963, a Carman senior to Mr. Coffey, who was a member of the wrecking crew, was used. Therefore, the claim is without merit and is respectfully declined."

In its submission the Carrier states:

"Claimant was not an assigned member of the Bloomington Wrecking Crew; consequently he was not called, * * *."

Obviously Rule 148 was not violated by failure to call the Claimant.

However, in their submission to this Board, the Employes argue that Claimant should have been assigned to the crew pursuant to his bid on bulletin. The Carrier meets this argument by contending that Claimant was not qualified. By a written statement made by the Local Chairman over four months after the notice of intention to file the claim before this Board, which was set forth as an exhibit with their Rebuttal, the Employes state that the Carrier did not assert Claimant's lack of qualification on the property, but rejected his bid because he was a write-up man and was needed at that work.

If the claim were that the Agreement was violated by the Carrier's refusal to assign Claimant to the wrecking crew, it is very possible that the claim would have been sustained. But that claim was not stated or progressed upon the property, and it is not even stated here. Consequently, it is not properly before us.

The claim presented on the property and stated here is that the Carrier violated the Agreement by not calling Claimant to accompany the wrecking outfit. It was properly denied upon the property because he was not entitled to be called, and consequently the Carrier did not violate the Agreement by not calling him.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

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

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