

**Award No. 5147
Docket No. 4962
2-SOU-EW-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)
SOUTHERN RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Railway System, violated the current agreement between the Electrical Workers, as represented by the International Brotherhood of Electrical Workers, and the Carrier, when the Carrier hired three men and placed them on electrician's jobs for which they were not qualified.

2. That the Carrier be compelled to remove the three men from the electrician's jobs that they are currently attempting to work and replace them with qualified electricians.

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 presents the same issues involving the same parties, the same rules and similar facts as were considered in Award No. 5146, and requires the same disposition.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1967.

DISSENT OF LABOR MEMBERS TO AWARD NUMBERS 5146 AND 5147

It is abundantly clear that the referee was looking for any reasons to avoid his responsibility to rule on the merits of the issues before him when he found the following:

"At the outset, we are faced by the fact that said claim asks this Board to compel the Carrier to remove from employment two men who are unnamed, in other words who are not in any way identified within the body of the claim, something which certainly fails to comply with applicable provisions of the Railway Labor Act, the Rules of Procedure of the National Railroad Adjustment Board and those of its Second Division."

The record indicates that there was no dispute between the parties as to who the two employees were as the Carrier, in their Ex Parte Submission "Statement of Facts" starting on page 8 and continuing through page 23, quote the letters of correspondence held on the property between the Organization and the Carrier in this dispute, and on page 8 the following appears:

"On June 25, 1964 following the employment of D. M. Walker, B. L. North, Claude Hill, Jr., B. J. Taylor, and D. H. Callaway at Chattanooga Diesel Shop the electrical workers' Local Chairman addressed the following letter to Mr. J. C. Waddle, Manager of that shop:"

The Carrier in this statement proves that there were five employees hired on June 25, 1964 as electrical workers which resulted in the initial claim being made by the Organization protesting these five employees did not have the qualifications of an electrician as provided for in Rule 135 of the Agreement.

Subsequent to this claim it was found that three of the employees did have the qualifications as the letter dated August 31, 1964 from General Chairman Williams to Mr. Cox, Director of Labor Relations, quoted on pages 10 and 11 of the Carrier's submission reads in part as follows:

"... in his original protest, Mr. Crews made reference to five men but since the origin of this protest, three of the five men have satisfactorily proved their qualifications as electricians. As a result of the foregoing we are protesting the placing of two men, D. H. Callaway and B. J. Taylor, in the capacity of electricians. . . ."

The referee then went looking for another excuse to support his avoiding his responsibility to rule on the merits of the issue before him when he found the following:

"So again, we are faced by a requirement of the board (Circular B of the 2nd Division) that when disputes involving seniority are docketed by the Division all parties who may be affected will be advised of date set for oral hearing requested by either or both parties, whereas no such notice appears to have been given; furthermore there is no showing of compliance with Rule 36."

Docket Number 4945 was clearly within the Board's jurisdiction, was properly before it and ripe for consideration and decision on its merits. The Board, not the parties, committed an error when they failed to comply with their Circular "B" and when this error was found, prior to an award being rendered, the Board had the responsibility to correct their own error so that they could perform their statutory duty by hearing the claim on its merits. To do otherwise is to deprive the employees of their statutory rights and constitutes a refusal of the Board to perform its statutory duties.

The referee also states that there was no showing of compliance with Rule 36. We have searched the record and can find no reference to Rule 36 being involved in this dispute.

Therefore, we dissent to the majority holding in Award Numbers 5146 and 5147.

D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger
O. L. Wertz