



Award No. 5782

Docket No. 5663

2-N&W-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the controlling agreement on July 25, 1966, when it denied Car Repairer J. W. Blackburn a Wreck Crew assignment as advertised by Bulletin, since he was the senior qualified employe, bidding on said position.
2. That accordingly the Norfolk and Western Railway Company be ordered to assign J. W. Blackburn to said vacancy and compensate him six (6) cents per hour above his regular Car Repairer's rate, and all over-time the wrecker is used outside of his regularly assigned bulletined hours, subsequent to July 25, 1966.

EMPLOYEES' STATEMENT OF FACTS: The aforesaid employe, hereinafter referred to as the claimant, was regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, as car repairer.

On July 18, 1966, carrier advertised per notice no. 878 job no. 1, in the carmen's craft at said point for applicants desiring to fill vacancy in wrecking crew. Claimant made application for the position advertised. Claimant was the senior applicant; however, the carrier assigned Car Repairer Hassel Stanbough, a junior employe.

Claim was filed with the proper officer of the carrier under date of August 11, 1966, contending that claimant was entitled to be assigned the wreck car job as advertised on notice no. 878, dated July 18, 1966, as per his bid submitted July 20, 1966, and requesting that he be assigned per rule no. 17 current agreement, and that he be paid the premium pay for the wreck car job (six (6) cents per hour above regular car repairer's rate) effective July 25, 1966, and as this claim is submitted as a continuing violation, all overtime on any wrecks subsequent to July 25, 1966 that he would have made had he been assigned the vacancy, and subsequently handled up to and including the highest officer of the carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

for service within forty-five (45) minutes, this carrier can state quite positively that Claimant cannot be available for service at all times, through all seasons of the year.

In summary, carrier has presented the following facts in support of its decision on this issue.

1. Claimant has no telephone in his residence.
2. Telephone on which claimant must be called is on an eight-party rural line.
3. Calling claimant involves a toll charge which would set a precedent.
4. Claimant lives twenty-one (21) miles from his work and driving time alone is thirty-five (35) to forty-two (42) minutes **under ideal conditions**, depending on route taken.
5. General chairman acknowledges that shortest route would not be used in all instances.
6. One distance restriction, applicable in all directions from Williamson, is not practical.

These facts show very conclusively that Claimant Blackburn could not be available at all times as required of employes appointed to wrecking service; therefore, the claim should be denied by your Board.

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 question posed by the claim as presented is not one of involving the ability of the Claimant to perform wreck crew assignments, but rather one involving his availability.

The Claimant in this case lives approximately 16 miles from the duty station. The roads are circuitous, mountainous, etc., and in the judgment of the Carrier officials, constitute a bar to giving Claimant the assignment involved. They aver that the nature of the job itself requires the ready availability of the employe. In addition to the road conditions from home to station, Carrier also points out that Claimant has no telephone in his residence and in the event of an emergency, which is the very essence of the assignment Claimant is requesting, he must be called on a neighbor's eight-party line.

The Organization contends that Claimant being the senior man should have been given the opportunity to qualify under the provisions of Rule 17. Under that Rule, they maintain that he should have been given a trial. If the difficulties arose because of distance, terrain, etc., and lack of communication facilities, Carrier then could have ruled him unsatisfactory for the job.

We cannot agree with the Organization's position in this matter. The very nature of the job itself requires his availability. One doesn't have to be clairvoyant to envisage a situation wherein under the circumstances peculiar to this case, Carrier would be endangering and jeopardizing the safety of other employes and the public were it to agree with Claimant. He was given the opportunity to move closer. If he wanted this assignment, he should have done so. Seniority is a precious right on the part of an employe, but Management still can and does judge the fitness of the individual employe. Fitness implies availability to perform the job. The judgment made by the Carrier in this matter does not violate any rule of the Agreement and we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1969.