



Award No. 5807

Docket No. 5667

2-C&O-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)

CHESAPEAKE & OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That position of "Freight Car Repairer — Extra Ground Man on tool care — Permanent" was improperly advertised for bid on Bulletin No. 31, Russell, Kentucky, dated February 9, 1967 by wording "must be 1st shift shop track employee" in violation of Rule 18 and Carmen's Special Rules 157 and 158.
2. Accordingly the tool car position should be reposted by eliminating "must be 1st shift shop track employee."

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operates a large facility at Russell, Kentucky known as Russell Terminal, consisting of diesel house, shop track and transportation yards where cars are switched, repaired, classified and cars are interchanged from other roads to the C&O lines, 24 hours a day, 7 days each week, where a large number of carmen are employed and hold seniority under rule 31 of the shop crafts agreement.

On February 9, 1967, carrier posted bulletin number 31 advertising position of freight car repairer — extra ground man on tool cars — permanent, shift and location, various, rate of pay \$2.9528, duties, as indicated by title and any other work assigned by foreman, must be 1st shift shop track employee.

As result of said bulletin the local committee approached carrier in protest of the stipulations and restrictions set forth in wording of the bulletin.

Carrier would not modify or change said bulletin to conform with prevailing rules of the agreement, therefore, a grievance was submitted as result of this action.

This dispute has been handled up to and including the carrier's highest designated officer, designated to handle such claims or disputes, all of whom have declined or refused to make satisfactory adjustments.

The agreement effective July 21, 1921 as subsequently amended is controlling.

seriously affect the prompt departure of the wrecking crew. This delay would also add appreciably to the already exorbitant costs of a wrecking operation.

In summary, it is carrier's position that:

- (1) Rule 18 has reference to primary positions, consisting of a regular weekly assignment with designated starting and quitting time, and does not have reference to secondary assignments such as tool car and/or wrecking assignments.
- (2) Rules 157 and 158 are irrelevant to the instant claim as they do not make reference to the bulletining of assignments.
- (3) As there are no specific rules governing the bulletining of secondary assignments, it is carrier's prerogative as to the method in which these assignments are made.
- (4) Carrier in no way restricted qualified employees of the carman craft in the exercising of their seniority rights and privileges under the existing rules of the applicable agreement.
- (5) Carrier has shown that bulletin #31 was properly prepared, posted, and that employees bidding thereon were properly assigned in accordance with the applicable agreement.
- (6) Carrier's position is strongly supported by Second Division Awards 3898, 3929 and 4814.

For the reasons set forth, the claim of the organization should be denied in its entirety.

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 waived right of appearance at hearing thereon.

The question here is whether, under the Agreement, Carrier had the right to restrict bidding on a tool car position at Russell Terminal in 1967. In February of that year a vacancy arose in the position of Freight Car Repairer-Extra Ground Man on Tool Cars — Permanent. This position was not a full-time one, since it involved only intermittent wrecking assignments. In its February 9, Bulletin, Carrier specified that the vacancy could be filled only by a first shift shop track employee. Petitioner contends that no such restriction should have been imposed. It relies primarily on Rule 18 which provides, in part, that

- “(a) When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service, if sufficient ability is shown by trial, be given preference to filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined.”

Carrier argues in substance as follows:

1. Rule 18 is not applicable since it makes no reference to the separate bulleting of Tool Car or Wrecking assignments. Such assignments, in fact, do not constitute positions on jobs since they have no definite schedule, i. e., no fixed starting time, length of service, rest days, and the like.

2. Carrier is not obligated to bulletin Tool Car or wrecking assignments at all since they carry a "dual status" and are "secondary" to regular assigned positions.

3. Carrier has restricted assignments of this kind to first shift shop track employees at several locations and, at others, has handled them by direct appointment rather than bulletin (with the cooperation of the Local Chairman). There is consequently no controlling practice to support Petitioner's position.

4. If second or third shift Car Inspectors were permitted to serve on wrecking crews, the normal movement of trains could be adversely affected, since delays might be encountered in finding replacements. Also, if such delays occurred, the wrecking crew might not be able to leave promptly, which could add appreciably to wrecking operation costs.

5. Its position finds support in Second Division Awards 3898, 3929 and 4814.

* * *

Award 3898 (1961) concerned a wrecking crew member whose basic job status had been changed from terminal carman to road carman. The Board held that, when this basic status changed, the employee lost the right to be called out on wreck service. It stated that "accessibility of the employee for wrecking crew service would seem to be a condition of his continued status as such". In the case at hand, however, no such issue exists. While Carrier has outlined possible drawbacks to using second or third shift men for the wrecking crew, there is no evidence in the record that such men were not available or accessible when their services were needed. (There is some disagreement on how long wrecking crew vacancies have been bulletined without any shift restrictions. Petitioner affirms this has been the practice since 1947; Carrier states the practice started sometime after 1951.)

In Award 3929 the Board recognized that Carmen assigned to wrecker service have a "dual status" since wrecking crews are composed of regularly assigned Carmen whose service on such crews is intermittent. But the issue in that case concerned the use of furloughed men on vacancies, not the right of Carmen to bid on wrecking crew vacancies. In Award 4814 the dispute concerned a Transportation Yard Carman Inspector who had been denied the opportunity to work as a crane operator in connection with a dismantling program since (1) assignments had been limited to Shop Track personnel, and (2) he had not placed a bid on the New Shop Track positions which had been bulletined in conjunction with the dismantling program. The grievant's claim was withdrawn before the Board could render a decision. Even if this could be considered a sustaining Award (as Carrier suggests and Petitioner denies), the different factual situation minimizes its relevance here.

We can find no support in Board decisions or in the Agreement for Carrier's basic contention that it is not obligated to bulletin wrecking assignments. While these are intermittent and "dual" in nature, they are regular assignments in the context of the Agreement. Note, for example, Rule 157 which declares that "regularly assigned wrecking crews, not including engineers, will

be composed of Carmen". Rule 158, as well, makes reference to use of "the regularly assigned crew" when wrecking crews are called. It is reasonable to hold, consequently, that, when Carrier utilizes a regular wrecking crew, it must bulletin vacancies on such crew, as they occur, pursuant to its Rule 18 obligations: "All vacancies or new jobs created will be bulletined". (On this score it may also be noted the job in question was bulletined in 1967 as "Permanent".)

Rule 18, of course, contains no exceptions and, thus, on its face, does not open the way to barring any qualified Carman from a wrecking assignment. Nevertheless, as indicated by Awards 3898 and others, this Rule must be applied reasonably. As stated there, "if a change of basic position were to develop a conflict so that continued availability for wreck crew duty was no longer possible his status as such would have to be discontinued". But when men are reasonably available, there is no contractual basis for excluding them from a wreck crew assignment, in our estimation, merely because of possible difficulties in replacing them on occasion. Rather, such problems can best be resolved by mutual agreement of the parties as, evidently, has been done at other locations. Even at Russell, where this dispute arose, it appears that wrecking crew assignments were once restricted by mutual consent.

In light of the above considerations the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1969.