



Award No. 5865

Docket No. 5772

2-D&H-CM-' 70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 35, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO
(Carmen)**

DELAWARE AND HUDSON RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on September 26, 1966, the Carrier abolished six Car Repairer positions on the Hudson, Pa. Repair Track and improper re-advertised six new positions as Wreckers on the Hudson, Pa. Wreck Train, stipulating that when not engaged in wrecking service they would be required to work on the Hudson, Pa. Light Repair Track.
2. That the Carrier improperly assigned a junior Carman as a Wrecker and failed to assign Carman John F. McDonald, as per list furnished by the Local Committee.
3. That accordingly, the Carrier be ordered to compensate the aforesaid employe at the time and one-half rate as follows:

1.8 hours for February 9, 1967 and
7.5 hours for February 10, 1967.

EMPLOYEES' STATEMENT OF FACTS: On September 26, 1966, The Delaware and Hudson Railroad Corporation, hereinafter referred to as the carrier, abolished six car repairer positions on the Hudson, Pennsylvania light repair track and advertised six new positions as Wreckers on the Hudson, Pennsylvania wreck train with the stipulation that when not engaged in wrecking service, these employes would work on the hudson, Pennsylvania light repair track.

Carman John F. McDonald, hereinafter referred to as the claimant, requested in writing the position of wrecker and that he be allowed to retain his regular position as car inspector. The claimant's request was not granted, and a junior carman was awarded the position. The local committee and the general chairman requested the carrier to abolish the six positions and re-advertise them "Car Repairers", and that the wrecking crew jobs be bulletined as emergency positions subject to be bid on by all carmen employed at the point irregardless of the positions that they hold as regular positions as carmen mechanics.

accordance with the provisions of the Railway Labor Act or the time limit on claims rule. Assuming that such alleged impropriety is based upon carrier's restrictions on the job assignments of those who would be considered for assignment to the wreck crew, it is carrier's opinion that such restrictions must be considered as having been accepted by the organization, in view of the lack of formal protest processed to a conclusion. It is carrier's further position that such restrictions would apply equally to regularly assigned and alternate wreckers.

Had claimant bid for one of the assignments as car repairer and wrecker advertised on September 26, 1966, he would have been so assigned with a resultant change in the location of his assignment from the train yard at Hudson to the Hudson shop, and a change in his hours of service. However, he failed to bid for such a position and therefore waived his right to permanent assignment as a regular wrecker. By attempting to qualify the claimant as an "alternate" wrecker through processing a claim for him when he was not used as such, the organization is attempting to obtain for the claimant from your Board that which the claimant failed to attempt to obtain for himself through the exercise of his seniority.

Claimant McDonald was not used as an alternate wrecker at 9:15 P.M., February 9, 1967, because FIRST, he was needed on his regular assignment as a train yard inspector at 11 P.M. that night and SECOND, he was not qualified for the service because he was not regularly assigned to the Hudson repair track day shift; and carrier requests that claim 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 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 Organization contends that Carrier violated the Agreement between the parties between September, 1966 and April, 1968; and that Claimant specifically suffered a loss of compensation on February 9 and 10, 1967.

In the handling on the property, the specific claim was denied by Carrier's highest designated officer, the Director of Labor Relations, on December 7, 1967.

The record shows that the claim was instituted before this Board on March 28, 1969 . . . over 14 months after the claim had been finally denied on the property.

Rule 23 1/2 (a) 3, provides in part:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board ***."

With respect to Paragraph 1 of the Statement of Claim, the Organization concedes that the alleged violation was rectified on April 24, 1968. Consequently, there is nothing before this Board to consider in that regard.

A W A R D

The Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1970.