



**Award No. 5924**  
**Docket No. 5756**  
**2-CB&Q-EW-'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. 95,  
RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO  
(ELECTRICAL WORKERS)**

**CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That in violation of the current Agreement, the Carrier improperly refused to award to Shop Equipment Repairman J. D. Sperry the installer position advertised under Bulletin No. 362 although he was the senior bidder on this position.
2. That accordingly, the carrier be ordered to additionally compensate Shop Equipment Repairman J. D. Sperry the difference in the rate of pay between his present position and that paid installers since November 13, 1967, when the aforementioned position was awarded to District Lineman V. D. Francis.

**EMPLOYEES' STATEMENT OF FACTS:** Shop Equipment Repairman J. D. Sperry, hereinafter referred to as the claimant, is regularly employed by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier. The claimant holds seniority in work classification A(3) of rule 34 which pertains to employees of the communication department and his work experience includes the following:

"Installer Helper	May 1948—1950
Cableman's Helper	6-months in 1950
Shop Lineman	1950-1956
Shop Equipment Repairman	1956-1966
Temporary Installer	Dec. 6, 1966—Dec. 4, 1967
Relief Temporary Installer	Dec. 4, 1967—Dec. 2, 1968"

The claimant also filled the temporary installer position of system installer E. J. Hose while the latter was on a leave of absence due to illness. Under date of October 31, 1967, the Carrier issued T & T Line Force Bulletin No. 362 which advertised a position of system installer for bidding purposes. The Claimant submitted a bid on the system installer position on October 31, 1967, in the customary manner and was the senior bidder on Bulletin No. 362. How-

had been settled by awards 1114 and 1117 when they allowed a very similar claim in behalf of Lineman R. P. Ross to expire under the nine-month provision of the time limit rule. That claim was identified as Shops 1936-67.

In conclusion, the carrier sums up its position as follows:

1. The vacancy involved was bulletined to employees holding Class A(2) seniority which Claimant Sperry did not have. Therefore Awards 1114 and 1117 between these parties have already settled the issue.
2. The Carrier was completely within its rights to include the possession of a Second Class or better license as one of the requirements for the incumbent of the System Installer position.
3. Claimant Sperry did not possess the required license and did not meet the qualifications for the position. Therefore he cannot properly contend that any violation occurred when Mr. V. D. Francis, who did possess the license and met other qualifications, was assigned.
4. FCC requirements for a licensed employee to make adjustments and tests of transmitters, as well as the growing amount of such work on this property, fully justified adding the license requirement to the qualifications for system installer positions.
5. This same Union has lost two similar claims in Awards 1114 and 1117 and permitted another (Shops 1936-67) to expire under the time limit rule which was similar to the case at bar.

For these reasons, the claim must be denied.

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**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 primary question to be determined in this dispute is whether Carrier, in refusing to assign Claimant to the position of System Installer, acted in an arbitrary and capricious manner.

Claimant, with a Class A-3 seniority date of November 1, 1956, bid on the position of System Installer (a Class A-2 position.) The position was awarded to another employee with a Class B-1 seniority date of May 17, 1967 because he possessed a Second Class Radio Telephone Operator's license. Claimant did not possess such a license. The bulletin of the position specified that the "Occupant of this position must possess F.C.C. Second Class Radio Telephone Operator license, or better".

Carrier contends that beginning with a bulletin dated March 17, 1965, such license has been required in order to be qualified for a System Installer position.

The Organization takes the position that possession of a license is not a requirement of Rule 34 A(2) of the Agreement, and that the imposition of

such requirement was a unilateral revision of the provisions of the Agreement. The Board does not agree.

First. Without citing numerous prior awards, Carrier has the exclusive right to determine fitness and ability. Under the circumstances, a determination to require the possession of a license (consistent with F.C.C. regulations) as a qualification for the position of System Installer was not arbitrary or capricious.

Second. As was stated in Third Division Award No. 12970, "It is basic that the agreements and contracts which the Board is called upon to interpret, must be construed in concert with existing laws and regulations".

### **A W A R D**

Claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1970.