



Award No. 5929

Docket No. 5709

2-EJ&E-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 20,
RAILWAY EMPLOYEES' DEPARTMENT, A.R.L.-C.I.O.
(ELECTRICAL WORKERS)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Linemen Helper P. A. Piunti was improperly removed from the linemen's helper seniority roster.
2. That accordingly, the Carrier be ordered to restore Lineman Helper P. A. Piunti to that seniority roster with his seniority rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Lineman helper P. A. Piunti, hereinafter referred to as the claimant, was employed by the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, on September 29, 1953 as a lineman helper at East Joliet, Illinois and was furloughed on February 15, 1961 from the position at East Joliet.

On April 4, 1967, the carrier issued a bulletin, advertising a new lineman's helper position in Gary, Indiana. On April 14, 1967, the carrier assigned this position to claimant, and on May 1, 1967 the carrier alleged that claimant vacated this position and terminated his employment with the carrier on April 27, 1967.

This dispute was handled with carrier officials designated to handle such affairs, who declined to adjust the dispute.

The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYEES: The employees submit that the claimant's name was improperly removed from the linemen's helper seniority roster. The claimant did not either verbally or in writing, bid on the new position of lineman helper in Gary, Indiana and therefore, his failure to report to Gary could not be considered as the basis to sever his relationship with the carrier.

The memorandum agreement of February 29, 1960, establishing system seniority, provides in pertinent part, and we quote:

"All new positions or vacancies of thirty days or more will be bulletined for ten (10) days at all headquarters. Bids on such positions must be re-

signed that position by the carrier on April 14, 1967. He was informed by Mr. W. K. Waltz, signal engineer, on April 14, 1967 that if he did not fill it within the ten day period, he would relinquish all future bidding rights in the classification of lineman helper and all higher classifications, if he held such. Claimant failed to fill the position within the ten day period; therefore, he terminated his employment relationship with the carrier on April 28, 1967 and his name was properly removed from the seniority roster.

The organization, by letter dated November 4, 1967 to Mr. Paul H. Verd, vice president-personnel, attempted to write in an exception as an alleged interpretation to the above quoted paragraph by stating "... Shall not apply to linemen helpers". The language of the above paragraph is clear and unambiguous and is not susceptible to this strained interpretation attempted by the organization. No exception is stated; therefore, if the assigned employee fails to fill the vacancy within the ten (10) day period, he will be held to absolutely have left the service of the company, whether a traveling lineman, lineman or lineman helper position is involved.

This claim is further defective in the following respects: Item seven of the memorandum of agreement of September 19, 1960, between the carrier and the organization provides as follows:

"In the restoration of forces senior men laid off will be given preference in their respective crafts, if available. The (10) days' notice will be considered sufficient time to report for work. Men not reporting in ten (10) days will have surrendered their rights to re-employment unless a request, in writing, for an extension of time shall have been approved by mutual agreement of the Carrier and the Local Committee."

The claimant has been in the status of a furloughed lineman helper since February 15, 1961. The lineman helper classification was the only classification in which he held any seniority. He was informed by letter on April 14, 1967, from signal engineer, W. K. Waltz, to fill the position of lineman helper at Gary within ten (10) days of April 14, 1967. Claimant failed to do this and did not request or receive an extension of time, thus, the carrier had no alternative except to terminate his employment relationship with the carrier, effective April 28, 1967.

Under either or both of the memorandum of agreements of February 29, 1960 and September 19, 1960, between the carrier and the organization, the carrier was warranted in terminating the employment relationship of the claimant with the carrier effective April 28, 1967.

The carrier respectfully requests a denial award.

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.

Claimant was employed by Carrier as Lineman Helper at Joliet, Illinois. He was furloughed on February 15, 1967.

On April 4, 1967, Carrier issued Bulletin No. 62 for a new position of Lineman Helper at Gary, Indiana, about 55 miles from Joliet, Illinois. No application or bids were received.

On April 14, 1967, Signal Engineer sent letter to Claimant enclosing Bulletin No. 62A in which he instructed Claimant to fill the position at Gary, Indiana, within 10 days or be held to relinquish all bidding rights in this classification. Claimant received the letter on April 17, 1967. This gave him to April 27, 1967, to fill the position. He failed to do so.

Petitioner avers Claimant's name was improperly removed from the Lineman Helper seniority roster and prays that Claimant's name be restored to the roster with his seniority rights unimpaired. Carrier denied the Claim citing Memorandum of Agreement of September 19, 1960 which in material part reads:

"In the restoration of forces senior men laid off will be given preference in their respective crafts, if available. Ten (10) days' notice will be considered sufficient time to report for work. Men not reporting in ten (10) days will have surrendered their rights to re-employment unless a request, in writing, for an extension of time shall have been approved by mutual agreement of the Carrier and the Local Committee."

Claimant made no request as provided for in the above quotation. Carrier then held Claimant to have surrendered his rights to re-employment.

We are persuaded by our study of the record that Carrier procedurally and substantively complied with agreement provisions and extended to Claimant full opportunity to protect his employer-employee relationship and seniority retention.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May, 1970.