



Award No. 6069

Docket No. 5939

2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson 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 Rule No. 17 of the Current Agreement when it failed to identify and specify, for the purpose of bidding, the position of one (1) Car Repairer advertised by Notice dated June 17, 1968 at Norfolk, Virginia.

2. That the Norfolk and Western Railway Company be ordered to bulletin all jobs stating shift, rest days, duties and work location, so employees may determine whether or not the duties or work location would be desirable to them.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier maintains at Norfolk, Virginia three (3) separate shop track facilities for the rebuilding and repairing of miscellaneous freight and coal hopper cars.

The shops and approximate number of employees of the carmen's craft employed on each shift are as follows:

Shop	Shift	No. of Employees
38th Street Shop	First Shift	91
38th Street Shop	Second Shift	52
Miscellaneous Shop	First Shift	33
Port Lock Shop	First Shift	9
Port Lock Shop	Second Shift	11
Port Lock Shop	Third Shift	9

Also, carrier has seven (7) separate Transportation Yard facilities, known as, i.e.:

jobs in a manner not provided for in the agreement. In ruling on similar requests, the various divisions of the Board have consistently held that the Railway Labor Act does not convey to the Board the authority to give the relief requested in such cases. See Second Division Awards 3760 and 4567; also, Third Division Awards 13615 and 6828.

In summary, the carrier has shown:

1. The first two paragraphs of Rule 17, pertinent in this dispute, are virtually the same as written in 1919.
2. The present format of bulletins has been accepted as fulfilling the requirements of Rule 17.
3. Having been accepted by both parties for approximately forty-nine (49) years, the bulletining practice has become a part of the rule and cannot be changed unless and until the rule is changed through negotiations.
4. The board is not empowered to grant the relief requested.

Under these circumstances, the request of the employees is without merit and carrier respectfully asks that it 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 bulletin complained of by the Organization was posted in the 38th Street Shop of Carrier's Lamberts Point Shops in Norfolk and read as follows:

"Advertising one job as Car Repairer working 38th Street Shop
3:30 P. M.-12:01 A. M., WED.-SUN., relief days MON. and TUES."

The Organization contends that the failure to describe the type of work to be performed more fully violates the provision of Rule No. 17 that states:

"When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them." (Emphasis ours.)

Petitioner further contends that the bulletin was vague and improper; that lack of full information prevented employees from determining whether or not the vacancy would be more attractive than their current assignment and precluded them from taking full advantage of their seniority rights; and that many awards of this Division (specifically No. 1440) support its position.

The Carrier contends that the bulletin form is in complete compliance with Rule No. 17; that the pertinent part of that rule has remained unchanged for several decades; that the Carrier's form of bulletin has always been the same and has never until recently been challenged; that the work of car repairers in this shop is not differentiated, since they work in gangs that make whatever repairs are needed on each particular freight car; that several of our awards support its position; and that the Board is not empowered to grant the relief requested.

The Organization's claim urges that bulletins should state the "shift, rest days, duties and work location." It appears to us that all of these items are covered by the bulletin that is the subject of this complaint. The Organization does not suggest what it thinks should have been added to this bulletin, and we are at a loss to guess just what it had in mind in view of Carrier's unchallenged statement that all car repairers at this shop perform similar work. Although we might dismiss this claim for lack of specificity, we shall deal briefly with the basic issue.

The issue focuses on the concept of the scope of the job. We would feel, for example, that in many shops it would be inappropriate to bulletin a job simply as "carman," since that craft is frequently in practice subdivided into various specialties such as car repairer, car inspector, welder, etc. To further subdivide the job concept by trying to identify each individual work assignment would tend to freeze each employe in a particular assignment and deprive management of the flexibility to which it is entitled unless it has already adopted a contrary policy by agreement, understanding, or past practice. We do not believe that Rule No. 17 requires such a narrow concept of "job" or "vacancy" as is here urged by the Organization.

We recognize that in some instances—though apparently not in this case—some of the individual work assignments of car repairers may be more attractive than others, but this does not require Carrier to consider them as separate and distinct jobs in the absence of special agreement or past practice. In such case individual preferences can be sought only informally by request.

The Organization's contention that our Award No. 1440 supports its case is not well taken. In that instance the Carrier had changed from a practice of separately bulletining "car inspector" and "car repairer" to posting both jobs simply as "carman," without any change in job content. We ordered resumption of the past practice. In the present case jobs are already described by the appropriate specialization as car repairer, and the Organization is seeking not to maintain the past practice but to change it.

AWARD

Claim denied on its merits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.

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