

Award No. 6074
Docket No. 5912
2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

**The Second Division consisted of the regular members and
in addition Referee Don J. Harr when award was rendered.**

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Norfolk and Western Railway Company, violated Rule No. 17, of Current Agreement when they refused to bulletin the job, or vacancy, of inspecting cars on the Shop Track at Williamson, West Virginia and, arbitrarily assigned Derrick Engineer B. J. Crawford, to such position instead.

2. That the Norfolk and Western Railway Company be ordered to cease and desist from such violation, and comply with Rule No. 17, of Current Agreement, by bulletining the job of Car Inspector on the Shop Track at Williamson, West Virginia, in order that the employes may bid the job in, in accordance with their seniority, as provided by agreement.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company hereinafter referred to as the carrier maintains at Williamson, West Virginia, a point on carrier's line, a shop track, where cars are inspected, serviced and repaired. Carrier is required by the provisions of Rule 17 of the current agreement, between the carrier and the employes represented by System Federation No. 16, that all vacancies or new jobs created will be bulletined.

Due to the retirement of T. E. Oakes, on December 1, 1967, who had performed the job of inspecting cars on the shop track for many years, a vacancy on such job resulted, which should have been bulletined under Rule 17, of current agreement, but carrier failed to comply with agreement and arbitrarily assigned carman, Derrick Car Operator B. J. Crawford, to the job or vacancy, without benefit of bulletin, thereby depriving carmen employed and, shown on said point seniority roster, of their seniority rights in bidding on the preferred job, of inspecting cars on the shop track.

Carrier alleges that the position of derrick car operator is an appointive position and because of the fact said B. J. Crawford operates the derrick car when used for wrecking service, it is not necessary to bulletin the job of car

the employe creating the vacancy. As previously stated, the derrick car engineer, by agreement, performs carman's work, filling in where needed when not occupied with the wrecking outfit; therefore, he has no assigned or regular duties. Under these circumstances his absence for any reason could not create a vacancy as contemplated by Rule 17.

On May 10, 1944, a memorandum agreement was executed concerning the method of advertising jobs at Williamson, West Virginia. The third paragraph of this agreement is pertinent in this dispute and for the convenience of your board is herewith reproduced:

"It is also agreed that jobs advertised in the Transportation Yard will specify the job by saying 'Job formerly held by John Doe' and all applications received will be honored. It is understood that jobs on the Shop Tracks are not affected by this Agreement, except those that have to do with painting, stencilling, welding and testing and repairs to air brakes on cars, and jobs know as carpenter jobs performed by shop track men."

It will be noted that this method of advertising jobs on the shop track is applicable only to those jobs relating to specific duties. This agreement was worded in this manner as, even at that time, only jobs involving painting, stencilling, welding, testing and repairing air brakes on cars and carpenter jobs were bulletined as painter, welder, air man and carpenter. All other shop track jobs were designated as carman. This practice has not changed either by practice or by agreement.

In requesting your board to order the carrier to establish a job with the title of car inspector on the shop track, the employes are not only asking that a "part time" job be created but also asking your board to amend the May 10, 1944 memorandum agreement, which you are not empowered to do.

In summary carrier would emphasize that the derrick car engineer is an appointed employe. He has no rights in the carman's craft other than that of performing carmen's work. He is not assigned, in the accepted sense of the word, to any particular duties in the craft and cannot be displaced by anyone in the craft. His primary duty is the care and maintenance of the wrecking outfit and is given other duties only when they do not interfere with this duty. In that he holds no regular assignment in the craft, his absence for any reason does not create a vacancy in the craft nor does his being given carmen's work to perform necessarily create a new job, especially if the performance of that work does not consume more than two or three hours as the job in question does. The general chairman admits that Mr. Oakes, the previous derrick car engineer, performed this work and no exceptions were taken.

Not only would the establishment of the position of car inspector on the shop track create an unnecessary job interfering with the carrier's prerogative of managing its affairs in the most economical and efficient manner at its disposal, but also amend the May 10, 1944 memorandum agreement in a manner disadvantageous and undesirable to the carrier.

Carrier respectfully requests that this request 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 employe or employes involved in this dispute are respectively carrier and employe 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.

Carrier maintains a shop or repair track at Williamson, West Virginia, where cars are inspected, serviced and repaired. A wrecking outfit and crew are also maintained at Williamson.

This dispute arose as the result of the appointment of a Derrick-Car Engineer at Williamson on December 1, 1957. Derrick-Car Engineer T. E. Oakes retired from service and B. J. Crawford was appointed as Derrick-Car Engineer by Carrier.

In addition to his duties as a Derrick-Car Engineer, T. E. Oakes had for years performed the job of inspecting cars on the shop track. The newly appointed Derrick-Car Engineer was assigned the job of inspecting cars at the Williamson shop track.

The employes contend that the agreement was violated in that a job vacancy existed which should have been bulletined under Rule 17 of the effective Agreement. The employes also rely upon Rule No. 103, the classification of Work Rule.

Rules 17 and 103 read in part:

"Rule No. 17 Filling Vacancies

When new jobs are created or vacancies occur in the respective crafts, the oldest employes 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. All vacancies or new jobs created will be bulletined.

Rule No. 103 Classification of work

Carmen's work shall consist of building, maintaining, dismantling (except all wood freight train cars and steel cars being dismantled for the purpose of scrapping or rebuilding), painting, upholstering and inspecting all Passenger and freight cars both wood and steel, * * * and all other work generally recognized as carmen's work."

The Carrier contends that the new Derrick-Car Engineer was properly assigned any duties by his supervisor when he was not occupied with the wrecking outfit. Carrier states that he is considered a "floater."

The Rule which allows Carrier to appoint the Engineer appears to be peculiar to this property. Rule No. 118 reads in part:

"Regular assigned wreck car crews, not including Engineers, will be composed of two carmen and laborers."

Carrier relies also upon Memorandum Agreement No. 3 which was signed by the then Superintendent Motive Power and General Chairman, B.R.C. of A. on May 13, 1939. This Agreement states:

"In conference on May 12, 1939, between E. A. Blackburn, General Chairman of the Carmen's organization, and O. F. Hark, General Master Mechanic, it was agreed that the request contained in General Chairman E. A. Blackburn's letter of April 14, 1939, to the Superintendent Motive Power, subject — 'Derrick Car Engineers performing Carmen's Work' — is hereby withdrawn, and that it will be satisfactory to allow derrick car engineers to perform work of carmen."

We note that the current Agreement was effective September 1, 1949, and is controlling.

Under the provision of Rule No. 103, the work of inspecting cars is reserved to carmen. Rule No. 17 requires that the vacancy be bulletined.

We will sustain Item I of the claim.

Carrier states in its submission that if Item 1 is sustained then Item 2 should be dismissed since this Board has held that the Railway Labor Act does not convey to the Board the authority to grant injunctive relief.

We find that the recent Awards of the various Divisions of this Board have followed this reasoning. Item 2 of the claim does not name a specific claimant or ask for a monetary Award.

Second Division N.R.A.B. Award No. 4567 states:

"We agree with the Terminal Company that as to the relief sought in a part of the second claim of the Employees, we are without authority. Nowhere in the Railway Labor Act are we empowered to provide injunctive relief in the disputes which we are authorized to hear."

See also Second Division Award 3760 and Third Division Award 13615.

AWARD

Item 1 of Claim sustained.

Item 2 of Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.