Award No. 6162
Docket No. 6003
2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Norfolk and Western Railway Company violated the Current Agreement when they failed to bulletin the permanent vacancy caused by the death of Helper Car Repairer C. W. McVey occurring on July 5, 1968, in identifiable manner, so as to enable the employes to exercise their seniority in an intelligent manner in selecting the type work preferred.

2. That the Norfolk and Western Railway Company violated the Current Agreement by filling said vacancy each day subsequent to the death of said C. W. McVey without assigning the proper employe to same.

3. That the Norfolk and Western Railway Company be ordered to comply with Agreement by bulletining said vacancy of C. W. McVey, as such, or in such manner as to enable the employes to identify such vacancy and exercise their seniority in bidding on the type of work desired.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the Carrier, maintains at Roanoke, Virginia, a point on its line, a shop, with facilities for the building and repairing of cars, commonly referred to as the East End Shop. Prior to July 5, 1968, Helper Car Repairer C. W. McVey held an assignment which was made vacant due to his death on July 5, 1968, the specific duties of which was rivet heater in the assembly line of the North Bay, West End.

In lieu of bulletining such vacancy in accordance with current agreement, carrier posted Notice No. 15, advertising for 1 Helper Carman, first shift, Freight Car Shop, General Helper Carman work, Monday through Friday, 7:00 A.M.to 3:30 P.M., with no information which could possibly be construed to identify it with the job formerly held by said C. W. McVey. Seven

parties becomes a part of the agreement and cannot be changed except through a change in the agreement. The identical circumstances give rise to this dispute. Since 1919 both the carrier and the organization have accepted the bulletin as satisfying the provisions of the bulletin rule, presently Rule 17. Though the agreement has been revised at least four (4) times since 1919, the same method of bulletining and assigning jobs has been retained. Carrier has maintained throughout the handling of the case on the property that its actions over the approximately fifty (50) years, acquiesced to by its employes, fulfills the intent of Rule 17. The organization through its Local Committee recognizes the practice; however, the General Chairman has sought to change the practice. Failing this on the property, he has appealed to your Board, which under the Section 3, First (i) of the Railway Labor Act, is not empowered to change a rule or agreement.

In summary, the carrier affirms that there is no provision in Rule 17 requiring that jobs be bulletined in a manner to show the specific duties or the precise location of the job. Since its beginning in 1919 the meaning and intent of this rule has not changed. The practical application, or practice, has survived four (4) revisions of the agreement, which is clearly indicative that both parties considered this method of bulletining jobs as satisfying the provisions and intent of the rule.

On the local level this dispute began as a difference of opinion as to the provisions of Rule 17 relative to the content of a bulletin advertising a job in the Freight Car Shop. Upon appealing the claims the General Chairman apparently recognized the futility of explaining away a practice of approximately fifty (50) years, abandoned this tactic and endeavored to secure a new rule which clearly and definitely stated what was contended the present rule provided. If, as the organization originally contended, the present rule provided for specific information on the bulletin, then the proposals of the General Chairman were meaningless and superfluous. Obviously, the requests for the rewritten rule are an admission that the present Rule 17 does not provide for those items contained in the requests.

In that the various Divisions of the Board have ruled that the act of both the carrier and the organization accepting a practice over a period of years as indicating the meaning and intent of a rule, which can be changed only through negotiations, carrier respectfully asks that this protest be declined.

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.

The contending parties, the issue presented for adjudication and the arguments propounded by opposing factions are identical to our Award 6160. Adhering to the principle of Stare Decisis, we, adopting the reasoning of that award, will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1971.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.