

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A.F. of L. - C. I. O.
((Electrical Workers)
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated and continues to violate the current working agreement, particularly Rules 15, 20, 28, and 33, when on or about May 14, 1973, Carrier, for medical reasons disqualified Pennsylvania District Electrician John Bohonak on pole line work and, thereafter, denied him the rightful exercise of his seniority over the junior incumbent to an air conditioning-refrigeration assignment, a position for which the petitioner was mechanically and physically qualified to hold.
2. That, accordingly, Claimant Electrician John Bohonak be permitted to return to the active service of this Carrier in the Pennsylvania District-Electrical Department Forces, and given displacement rights over a junior employee who is the incumbent to an air conditioning-refrigeration assignment; and,
3. That the Petitioner, Claimant Electrician John Bohonak, be made whole with respect to any and all wage loss and all other fringe benefits that he would have otherwise been entitled to had he been continued in the Carrier's active service; and,
4. That, in addition thereto, that the monetary adjustment accruing to him be inflated to reflect an annual interest rate of six (6) percent per annum, compounded quarterly and computed from the date of initial infraction.

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.

On May 7, 1973, the Claimant, Mr. John Bohonak, an employee with 23 years of service, was notified by the Carrier that he would not be permitted to perform service subsequent to May 11, 1973, because he was not physically capable of performing all assigned duties of road electricians. The Carrier's decision was made based on determinations by two physicians that Claimant was not to climb poles. On May 14, 1973, the Claimant attempted to displace Road Electrician A. Altieri, a junior employee and incumbent to an air conditioning-refrigeration position, but was not permitted to do so by the Carrier.

It is the Organization's position that the Claimant should have been permitted to exercise seniority over A. Altieri since A. Altieri's position does not consist of pole climbing (Employees' Exhibit I). The Organization contends that the Carrier was aware of A. Altieri's inability to perform line work when the position was bulletined and awarded to Altieri (Employees' Submission P. 10). The Organization contends that since the Carrier never required A. Altieri to climb poles before May 14, 1973, that it is estopped from requiring the Claimant to be able to climb poles. The Claimant contends that the bulletin for Altieri's position, which requires the applicant to perform line work and thus climb poles, is a "fake bid" which is being used by management to prevent the Claimant from exercising his seniority rights.

The Carrier contends that the Claimant was physically unable to perform all the skills required of Road Electricians: that Altieri's job included pole climbing and the Claimant could not climb poles. The Carrier contends that when the Claimant attempted to displace Altieri, he was not qualified at that time **to perform refrigeration** and air conditioning work. Carrier contends that there is no rule of the Agreement which would allow the Claimant to displace Altieri since the Claimant's position was not abolished nor was he displaced in the exercise of seniority by another employee.

The position held by Altieri was last advertised on December 19, 1968. The bulletin states in part:

"Applicants for this position must be qualified to perform line work..." (Carrier's Exhibit H)

In Award 2676, involving the same parties, this Division held that line work encompasses pole work. It is admitted by all parties that the Claimant is physically incapable of climbing poles. It is within the Carrier's clear prerogative to require that an employee, attempting to displace another employee, be physically capable to perform all the duties required and described in the bulletin for the position. Cognizant of all the contentions of the Organization, we must deny the claim.

Concerning the application of Rule 20, Carrier recites, in its Exhibits F and M and its Rebuttal, page 9, what it has done for the Claimant in assisting him to procure an electrician's position. We commend the effort

shown in the record. We cannot judge at this distant Board the intensity of this effort on the part of the Carrier, however. Therefore we strongly urge that if the Claimant does not as yet hold a permanent position as an electrician on the date of this Award, that the Carrier greatly intensify its efforts to find a permanent position for this employee.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of January, 1976.