

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. 7, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Electrical Workers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc. violated the provisions of the current agreement when on March 12, 1975 it improperly assigned a junior Class 1-A man to a position of Electronic Technician at Minot, North Dakota.
2. That, accordingly, the Burlington Northern Inc. be ordered to assign Mr. C. L. Pollington, the senior bidder, to this position and to compensate him in an amount equal to the difference between the Communication Technician's rate and that of the Electronic Technician from the start of this violation and to continue until the claim is adjusted.

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 employees 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 Claimant, Mr. C. L. Pollington, holds system seniority as a Communication Technician class 1-A (formerly telephone inspectors class 1-A). Immediately prior to the circumstances giving rise to this claim, the Claimant was occupying the position of Communication Technician on the day trick at Willmar, Minnesota. At Minot, North Dakota, some 450 miles away from Willmar, Minnesota, Mr. J. F. Sneed vacated his position of Communication Technician on the day trick. The Carrier, as is its right under the agreement, bulletined the job vacated by Mr. Sneed as an Electronic Technician Class 1 position, with the addition of the requirement of a second class FCC license. The Electronic Technician position at Minot paid \$2.97 per month more than the Willmar position. The two senior bidders on the bulletined position at Minot, North Dakota were the Claimant, standing number 130 on the Communication Technician Seniority roster and Mr. E. F. Suckert, standing number 135 on the Communication Technician Seniority roster. The Claimant did not have a second class FCC license. Mr. Suckert, did have a second class FCC license. The Carrier considered Mr. Suckert the senior qualified applicant and awarded him the position.



Rule 63(c) states:

"(c) It is the intent of the Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

Under the former Great Northern Ry. Company schedule agreement, all positions such as the ones involved in the instant case were bulletined systemwide as Telephone Inspector Class 1-A with no requirement for an FCC license. Both Minot, North Dakota and Willmar, Minnesota are former Great Northern Ry. points. On September 1, 1972, the date the Schedule Agreement for Communication and Electrical Department employees was signed, a side letter of understanding between the parties involved also was signed. It states in pertinent part:

"...Employees who on the date of this agreement hold seniority as Telephone Inspector Class 1-A will be permitted to place themselves on any new position or vacancy of Electronic Technician which is substituted for a position of Communication Technician (or its equivalent title under former component line Schedule Agreements) in existence on the date of this agreement, without being required to possess an FCC License, unless they can hold a position of Communications Technician on the same shift without being required to change their residence...."

It is unquestioned that the Claimant did hold seniority as Telephone Inspector Class 1-A on September 1, 1972. A vacancy of Electronic Technician was in fact substituted for the position of Communication Technician at Minot, North Dakota; which position was in existence as of September 1, 1972. The parties clearly agreed that there would be no requirement for protected employees to possess an FCC license. The Claimant was the senior bidder on the Minot, North Dakota position.

The Carrier argues that the clause of the September 1, 1972 side agreement "unless they can hold a position of Communication Technician on the same shift without being required to change their residence" precludes the Claimant, the senior bidder who was otherwise qualified for the position as set forth in the letter of September 1, 1972, from placing himself on the Minot, North Dakota position. The Carrier contends that the Claimant does hold a position of Communication Technician at Willmar, Minnesota, which is the same shift as the vacancy at Minot some 450 miles away, that being the day trick. The Carrier further contends that since the Claimant has held the Willmar position for some time, he can obviously continue to hold it without being required to change his residence.

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The Board disagrees with the Carrier's interpretation of the so-called "unless clause". The Claimant was not attempting to bid on a position of Electronic Technician on the day trick at Willmar, Minnesota, where he would be on the same shift and not be required to change his residence. He was the senior bidder on the position at Minot, North Dakota, and at Minot, North Dakota, there was no Communication Technician vacancy on the same shift as the Electronic Technician vacancy. The entirety of the "unless clause" must be construed in light of the Schedule Agreement and the clear language of the September 1, 1972 side agreement. I find that the "unless clause" clearly refers to the situation where an employee holding a Communication Technician position (formerly telephone inspector Class 1-A) without an FCC license is the senior bidder on an Electronic Technician position on the same shift and no change of residence or general locality is required or involved in the positions in question. Since such is not the situation in the instant case, the September 1, 1972 clearly allows the Claimant to place himself on the Electronic Technician position at Minot, North Dakota without having a FCC license. We shall sustain the claim.

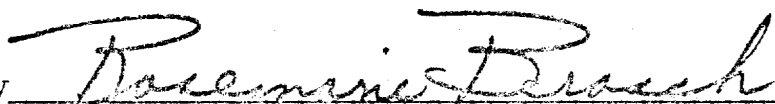
A W A R D

Claim sustained.

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 30th day of September, 1977.

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