

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (United Steelworkers of America
(A.F. of L. - C.I.O.
(
(
(The Lake Terminal Railroad Company

Dispute: Claim of Employees:

Claim No. CD-11-76 - This time claim is instituted in behalf of Car Repairman - Welder W. Sajdoh, #1455, who claims he was deprived of an opportunity to work overtime as a welder on June 30, July 1, and 2, 1976, due to Car Repairman-Craneman H. Messer being used as a welder on those dates on the 3 P.M. to 11 P.M. shift. Rule 16 (1) of the controlling agreement plainly states: "Any Car Shop employee may hold only one bid job at any one time." Mr. Messer did, in effect, hold two bid jobs on the dates noted above. Mr. Sajdoh claims, as penalty for the instant violation, twelve hours pay at the welder's rate for each of the dates noted above, in addition to all other earnings.

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.

Claimant is a Car Repairman-Welder assigned to 7:00 A.M. to 3:00 P.M. shift. On the dates in question on the 3:00 P.M. to 11:00 P.M., shift, Carrier utilized Car Repairman-Crane Car Operator H. Messer to perform certain welding work during his regular assigned tour of duty. Claims were presented in behalf of Claimant for twelve (12) hours' pay on each date alleging a violation of Rule 16(1) of the schedule agreement.

Rule 16(1) provides that:

"Any car shop employee may hold only one bid job at any one time."

The contention advanced by Petitioner is that when the Car Repairman-Crane Operator performed welding work, he, in effect, held two (2) jobs which violated Rule 16(1); and that the use of Car Repairman-Crane Car Operator Messer to perform welding work caused a crossing of craft lines which Carrier has not shown that they have a right to do. Carrier on the other hand argues that Rule 16(1) applies only to jobs which are bulletined and bid off; and that in this case, Car Repairman-Crane Car Operator Messer had only one (1) bid job.

We find that Rule 16(1) is clear and unambiguous, and was not violated since H. Messer held only one (1) bid job, namely, the job of Car Repairman-Crane Car Operator.

Furthermore, Rule 2(b) of the Agreement reads as follows:

"RULE 2 - Rates of Pay

(b) If an employee is temporarily transferred to a higher rated job, he shall receive the higher rate while working on such job, but if temporarily transferred to a lower rated job, his regular rate shall not be reduced.

When an employee is required to work on a job with a rate higher than his regular rate, he shall receive the higher rate for the entire day, regardless of the number of hours worked on that job.

This rule clearly and unambiguously permits the temporary transfer of employees to other jobs for an entire day or a portion of a day, and provides for the compensation to be paid to employees temporarily so transferred. This is exactly what was involved here. Such a temporary transfer clearly does not result in an employee holding two (2) bid jobs. Rule 2(b) clearly evidences this fact by its very language, whereby it refers to the jobs to which temporarily transferred as "higher rated" or "lower rated", and to the only job the employee actually holds as his "regular rate".

Our review of the record in this case leads us to the conclusion that Rule 16(1) was not violated. The burden in this case is not on the Carrier to show that its action was authorized by some provision of the Agreement. Rather, petitioner has the burden to show that the action as taken somehow violated some part of the Rules Agreement. No such evidence has been brought forth in this case. We hold that Carrier did not violate Rule 16(1) in this instance and the claim must be denied.

Form 1
Page 3

Award No. 7426
Docket No. 7357
2-LT-USWA-'77


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 9th day of December, 1977.

