

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A.F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated Rule No. 17 of the Agreement dated January 1, 1943, as subsequently amended, when on September 4, 10 and 15, 1975, all jobs at Elmore Shop Track and Train Yards, with the exception of one (1), were abolished and readvertised and assigned in a highly improper manner such as Car Repairer Shop Track and/or Car Repairer Helper Shop Track.
2. That for forty (40) years and past practice, jobs were advertised showing the predominant part of work, such as Car Inspector, Car Repairer, Air Brake Inspector, Carmen Welder, Repairing and testing Air Brakes, Lead Man etc., in the Receiving Yard, Classification Yard, Transportation Yard and Shop Track, thereby violating Section 1 (c) of the June 18, 1959 Merger Agreement.
3. That because of such violation and capricious action, Carrier be ordered to abolish and re-advertise said jobs as they were prior to September 5, 1975, and/or in such manner as to enable the employees to select the type and kind of work to be performed, the predominant part of the time, in accordance with their seniority, and/or, to select the predominant part of the general location, in accordance with their seniority.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 or about September 5, 1975, all of the Carmen assignments at Elmore, West Virginia were abolished and reestablished as "Car Repairer" positions reporting at the Elmore Shop Track.

Petitioner has argued that this type of job bulletining, and assignments made pursuant to such posting, violates: Section 1(c) of the June 18, 1959 Merger Agreement which merged the Virginian Railway Company into the Norfolk and Western Railway Company; and Rule 17 of the Virginian Railway Agreement -- Filling New Positions and Vacancies. The thrust of the Organization's argument is that those Carmen positions whose primary function consists of inspection work should be so identified when bulletined as to enable employees intelligently to exercise their seniority bid rights with respect to such positions.

Carrier, on the other hand, contests the Organization's contentions on two grounds. First, if this dispute involves an application of the 1959 Merger Agreement, our Board is not the proper forum to effect a resolution of such dispute. Second, Rule 17 -- the standard "bulletin" rule -- does not require that Carrier "specify either what the preponderance of the job duties will be, or in what particular work area they will be performed." (Award No. 6091 - Gilden). Carrier has pointed to eleven (11) prior Awards of this Division involving these same parties in support of their application of Rule 17 -- Award Nos. 6034, 6069, 6091, 6092, 6160, 6161, 6162, 6176, 6217, 6272, and 6273.

It is our opinion that the 1959 Merger Agreement per se is not involved in this dispute. Section 1(c) of that Agreement, cited by Petitioner, provides only that the Rules Agreement of the former Virginian Railway was to be preserved on the merged property, subject to subsequent change in accordance with the Railway Labor Act. No one has challenged this fact. Our determination of this case concerns only Rule 17 of the former Virginian Railway Company Rules Agreement. We have jurisdiction to interpret that Rule.

We have reviewed all eleven (11) of the prior Awards cited involving these same parties. None of those Awards involved the magnitude of change as was effected in the instant case. Each involved the bulletining of from one to four positions. In these prior cases Petitioner consistently maintained that each position bulletined should specify the particular location and types of Carmen work contemplated in the assignment. However, the several Awards have unanimously concluded that:

"... there is no requirement in said rule to specify either what the preponderance of the job duties will be, or in what particular work area they will be performed...." (Award No. 6091)

We can find no fault with that conclusion.

Award No. 6069 observes that:

"The issue focuses on the concept of the scope of the job. We would feel, for example, that in many shops it would be inappropriate to bulletin a job simply as 'carman', since that craft is frequently in practice subdivided into various specialities such as car repairer, car inspector, welder, etc. To further subdivide the job concept by trying to identify each individual work assignment would tend to freeze each employee in a particular assignment and deprive management of the flexibility to which it is entitled unless it has already adopted a contrary policy by agreement, understanding, or past practice. We do not believe that Rule No. 17 requires such a narrow concept of 'job' or 'vacancy' as is here urged by the Organization.

We recognize that in some instances--though apparently not in this case--some of the individual work assignments of car repairers may be more attractive than others, but this does not require Carrier to consider them as separate and distinct jobs in the absence of special agreement or past practice. In such case individual preferences can be sought only informally by request.

The Organization's contention that our Award No. 1440 supports its case is not well taken. In that instance the Carrier had changed from a practice of separately bulletining 'car inspector' and 'car repairer' to posting both jobs simply as 'carman', without any change in job content. We ordered resumption of the past practice. In the present case jobs are already described by the appropriate specialization as car repairer, and the Organization is seeking not to maintain the past practice but to change it."

While keeping these principles in mind, we find in the record uncontroverted evidence to show that subsequent to the initial bulletining of all 33 positions at the Shop Track, Carrier subsequently re-bulletined eight (8) of the positions to the Transportation Yard. That is the situation which exists at the present time.

Form 1
Page 4

Award No. 7603
Docket No. 7545
2-N&W-CM-'78

Therefore, it is our determination that the principle expressed in Award No. 6091 as quoted above, coupled with the observation as set forth in Award No. 6069 have been properly combined in this instance to arrive at a resolution of the instant situation which renders the dispute moot. There is nothing left for us to decide in this case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brusca - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1978.