

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Electrical Workers)  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the current Agreement, when on April 7, 1977, Electrician R. J. Shiflet was arbitrarily refused all his rights and seniority as prescribed in the Controlling Agreement and Section 505D of Public Law 93-236.
2. That, accordingly, Consolidated Rail Corporation be ordered to compensate Electrician R. J. Shiflet eight (8) hours pay for each day he was deprived of his rights and seniority from April 7, 1977, through June 2, 1977, and every date thereafter until the violation has ceased.

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.

Claimant was transferred from the Baltimore Passenger Station to a vacation relief position at the Orangeville Enginehouse under Section 505 - D of the Regional Rail Reorganization Act of 1973. The position to which he was to be assigned was advertised on Bulletin #26 dated March 31, 1977 and subsequently awarded to another employee on April 9, 1977.

The Organization contends that claimant accepted this position, when it was offered to him by carrier on April 4, 1977, pursuant to Section 505 - D and that carrier erred when it assigned it to another employee. The Organization asserts that claimant's rights under Agreement Rule 2 - A - 1(e) were violated and that he was deprived of his seniority rights by this action.

Carrier, on the other hand, argues that the claim before this Board is different than the claim originally submitted on the property and thus inconsistent with the requirements of Circular No. 1. It contends that the Board is powerless to adjudicate interpretative claims arising out of asserted Sec. 505 - D violations, since a Special Board of Adjustment has been created by the Regional Rail Reorganization Act to resolve such disputes. Carrier concludes that claimant suffered no monetary loss during the period April 9, 1977 to June 3, 1977, when this position was abolished, but instead earned more money.

In reviewing this case, we must agree in a conceptual sense that the claim submitted to the Board, differs somewhat from the claim originally filed on the property. Admittedly we do not have authority to interpret or apply disputed Section 505 - D language or for that matter, other language contained in the Regional Rail Reorganization Act of 1973, since a specified dispute resolution process exists for this purpose. But we find in the appeals record consistent references to purported Rule 2 - A - 1(e) violations which despite perhaps the hasty preparation of the claim submitted to us, nevertheless reveal the same tactical objectives. We thus find the claim properly before us.

In the instant dispute, claimant did not bid for this position, but was asked according to Section 505 - D procedures, whether he wanted the vacation relief position. It was not a bid - award personnel transaction. He was neither transferring from a position on one shift to a position on another shift, by award (bid) nor transferring from one position to another position on the same shift, by award (bid). Moreover, he did not perform to a substantial degree or in this case to any degree, the duties of an advertised vacant position, or assigned to the performance of work, not ordinarily included in this position. In fact, claimant was, technically speaking, a surplus employee at this time. We recognize that the position was awarded to a junior electrician, but it was done pursuant to a contractually permitted bid process.

This Board has consistently held that, absent a compelling finding of past practice, it will not vary the clear terms of an Agreement. We find no evidence that Rule 2 - A - 1(e) was previously construed in a manner asserted by claimant or specifically negotiated to cover employment contingencies such as this one. Reading this type of constructions into the above rule, would take us beyond our adjudicative limits. This Board is not empowered to rewrite a collective bargaining agreement. We will deny the claim.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of September, 1979.