

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

(Brotherhood Railway Carmen of the United
(States and Canada, A.F.L.- C.I.O.
Parties to Dispute: (
(Western Fruit Express Company

Dispute: Claim of Employees:

1. That the Western Fruit Express Company violated Rule 14 of the current controlling Agreement when they failed to bulletin the regular bid position assigned to assemble and repair parts for Refrigerator Cars at Carrier's St. Paul shop, which was vacated due to the retirement of Carman J. A. Graf and improperly assigned other employees who have less seniority than Claimant R. V. Hammer. Some of the assigned employees have not worked out their required four years to become a Carman.

2. That accordingly, the Western Fruit Express Company be ordered to bulletin the position of Carman Refrigeration Mechanic to assemble and repair parts for Refrigerator Cars and that such position be advertised in accordance with Rule 14.

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 employees 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.

Mr. J. A. Graf was awarded the position of Mechanical Refrigeration Repairman by Bulletin dated April 18, 1974 at the Carrier's Mississippi St. Shop in St. Paul, Minnesota. Although the bulletin covering this position did not refer to the job of rebuilding parts, Mr. Graf was the only employee who performed such work, and when he ran out of rebuilding work he would perform other duties. The Claimant, Mr. R. V. Hammer informed the Carrier that he desired the job "which consists of the rebuilding of parts" which was to become vacant upon Mr. Graf's retirement on December 31, 1980. A claim requesting that Mr. Hammer be given the "Parts rebuilding job" was declined by the Carrier on January 21, 1981 on the basis that parts rebuilding was not a full time job and would be assigned on a rotating basis to all employees assigned to the Mississippi Street Shop. The decision was rejected by the Organization and properly progressed to this Board.

The Organization contends that the Carrier violated the current controlling agreement, specifically Rule 14, when it failed to bulletin the position vacated due to the retirement of Mr. Graf. The Organization states that the facts reveal that the Carrier determined there was a need for a position of rebuilding parts and that it was assigned to only one person Mr. J. A. Graf who was the oldest seniority person at the point. The Organization contends that when the vacancy arose due to the retirement of Mr. Graf, such position with duties assigned to rebuild parts should have been bulletined in accordance with Rule 14, which would not preclude the Carrier from assigning the successful applicant to perform other Carman duties, as necessary. The Organization states that it must be recognized that there are jobs within the Carman's classification which are more preferable than others and when Carman are assigned exclusively to a particular type of work, then such position should be advertised for bid so that it might be identifiable for the purpose of employees exercising their seniority.

The Carrier contends that Rule 14 provides no support for the Organization's claim; and that nothing contained in the rule requires the Carrier to restrict the assignment of parts rebuilding and repair work to a single position. The Carrier refers to Second Division Award 9241, involving the same parties, which the Carrier states was based on the same premise as the instant case, and which claim was denied by the Board.

Rule 14 states:

"Bulletining New Jobs and Vacancies

When new jobs are created or vacancies occur in the respective departments, the oldest employee in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins will be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the Shop Superintendent and furnish copy of the application to the local committee."


We find that Rule 14 does not require that the rebuilding and repair of parts be assigned to a single Refrigeration Mechanic's position. Please see Award No. 9241 (LaRocco) where it was held that the Carrier was not required by Rule 14 to reassign duties to a particular position after a retirement but could have the work performed by other employees as needed. Since no rule prohibited the Carrier's action in this case, we must deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984