

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen Gene Miller and Mark Story, Council Bluffs, Iowa, were denied the right to exercise their seniority for a job of their choice with a preferred shift and rest days, account the Chicago & North Western Transportation Company violated Rules 14, 16 and 21 of the controlling agreement when it failed to bulletin Job 008 - Freight Car Repairer, 8:00 p.m. to 4:30 a.m., and Job 015 - Freight Car Repairer, 8:00 p.m. to 4:30 a.m. Council Bluffs, Iowa on November 7, 1989.

2. Accordingly, Carmen Gene Miller and Mark Story be compensated eight (8) hours per day at the time and one-half rate of pay for each work day held off Jobs 008 and 015 dating from November 7, 1989 to November 30, 1989 and each work day thereafter as this is a continuous claim.

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 employes 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 November 9, 1989 the Carrier issued an "Information Bulletin" stating, in pertinent part as follows:

"Effective this date, the specific assignment of air brake work is deleted from the title of position for the following position:

<u>FROM</u>	<u>TO</u>
008 - Freight Car Repairer/ Air Brake	Freight Car Repairer

Effective this date the specific assignment of car inspector work is deleted from the title of position for the following position:

015 - Freight Car Repairer/      Freight Car Repairer"  
Inspector

The incumbent employees remained in the two positions. The Organization argues that the changes specified in the Information Bulletin created "new positions," which should have been bulletined under the provisions of Rule 21. This Rule states in pertinent part as follows:

"(a) New positions or vacancies (except those of thirty calendar days or less duration) will be promptly bulletined in agreed upon places accessible to all employees affected for a period of seven calendar days.

. . .

Bulletins will show location, title of job, brief list of principal duties rates of pay, assigned hours, meal period, assigned, day or days of rest and probable or expected duration. Such bulletins may include wording 'and such other work as may be assigned.'

In the event positions are bulletined, Rules 14 and 16 are applicable in terms of seniority rights of employees seeking the positions. The Claimants herein are senior to the incumbents of the two positions, and the Organization contends their seniority rights were impaired by failure of the Carrier to bulletin the positions.

The Carrier argues that there is no Rule prohibition to "eliminating or adding words from the title of a job." With this, the Board would agree. Here, however, the Carrier in its Submission describes the change in the position as follows: "[W]hile they [the employees] would continue to perform air brake work and inspection work, these duties would not long comprise the majority of the jobs' work." (Emphasis added)

Rule 21 refers to the requirement that bulletins include "brief list of principal duties." Here, the Carrier exercised its right to change the two positions sufficiently to make "all jobs at the location similar." Since the two positions were originally designated as differing from other positions, the Board concludes that the revision to identical duties as in other positions meets the requirement of a "new" position. Bulletining was required, as argued by the Organization.

The Carrier cites Third Division Awards 16217, 16927, and 12373 in defense of its position. In these Awards, however, there was no finding whatsoever that "the majority of the jobs' work" was eliminated.

The Carrier further contends that there is no certainty that the Claimants would have been successful in obtaining the positions if they had been bulletined. They are, however, the Claimants of record, and their seniority standing in relation to the incumbents is not disputed. As to remedy, that sought by this continuing Claim is excessive. The Board will find that the positions, if still extant, shall be bulletined, and the Claimants shall receive the difference in pay, if any, between what they would have received had they been awarded the positions and their actual earnings during the same period. This shall apply until the bulletin results are determined.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1992.