

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)
NEW YORK, CHICAGO & ST. LOUIS RAILROAD

DISPUTE: CLAIM OF EMPLOYEES.—That Mr. O. W. Hively, carman, Fort Wayne, Indiana, was improperly assigned to a bulletined position, by management, as he failed to comply with the provisions of Rule No. 14 of the current agreement effective June 1, 1935.

POSITION OF EMPLOYEES.—On August 5 and 7, 1935, notices were posted on the bulletin boards in the car department at Fort Wayne, Indiana, setting forth certain new positions to be established and calling for applications or bids from the employes (carmen), desiring the assignments thereon.

Carmen, to the number of ten (10), made application for the various positions set out in the bulletins as provided for in Rule No. 14, and all of the applicants, excepting Mr. O. W. Hively, supplied a copy of their application to the local chairman of the carmen's committee in addition to their application filed with the official in charge.

The committee contends that the failure of Mr. Hively to supply the local chairman of the carmen's committee with a copy of his application is cause to declare his (Hively's) application null and void, thereby making him ineligible to the position to which he was later assigned by management, because of non-compliance with the language and intent of Rule No. 14 which reads as follows:

"RULE No. 14. In reduction of forces or when new jobs are created or vacancies occur in the respective crafts, the oldest employe 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 must be posted five days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make written application to the official in charge, and a copy of the application will be given to the Local Chairman.

"An employe exercising his seniority rights under this rule will do so without expense to the carrier; he will lose his right to the job he left; and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft.

"Temporary vacancies of thirty days or more will be bulletined. Employes filling such temporary vacancies will be returned to their former positions at the expiration of the temporary position."

We contend that the language of the rule quoted above clearly indicates that the EMPLOYEES will, themselves, be required to do a certain and definite thing as and when they desire to avail themselves of the rights and privileges to be accorded them under the terms of this rule, and we further contend that failure to meet the requirements of the rule operates to deny such employes that which he is seeking, in the same sense that failure to meet the full requirements of other rules would certainly operate to deny to him that which he might otherwise desire.

Despite the protests of the local and general committee, the management did assign the position to Mr. Hively.

We, therefore, respectfully request that the application of Mr. O. W. Hively, in answer to the bulletins of August 5th and 7th, 1935, be declared null and void for his failure to meet the full and explicit requirements of Rule No. 14 of our current agreement, dated June 1, 1935, and the senior applicant who did fully comply with Rule No. 14 be awarded the position now occupied by Mr. Hively.

POSITION OF CARRIER.—Rule 14 of "Agreement between The New York, Chicago and St. Louis Railroad Company and the Employees Enumerated Herein Represented by System Federation No. 57, Railway Employees' Department of the American Federation of Labor", effective June 1, 1935, is as quoted in "Position of Employees."

On August 5, 1935, bulletin was posted.

Mr. O. W. Hively filed written application for position designated as (2) on the bulletin. Mr. Hively was the senior applicant.

As a result of protest from the local committee, awarding of the position was deferred pending negotiations, in which negotiations the only exception taken by the representatives of the employees was that Mr. Hively did not furnish the local chairman with copy of his application. During the negotiation, and before assignment to position was actually made, the representative of the carrier offered to furnish copy of Mr. Hively's application to the local chairman, which the committee was unwilling to accept as complying with the rule.

The wording of the rules does not designate who is responsible for furnishing copy of application.

Mr. Hively was assigned to the position.

When copy of the application was offered to the local committee by a representative of the railroad company, before the position was awarded, the rule as it reads was fully complied with.

In view of the foregoing the railroad could not do otherwise than award the position to Mr. Hively.

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.

The parties to said dispute waived right of appearance at hearing thereon.

Rule 14 reads in part:

"* * * All vacancies or new jobs created will be bulletined. Bulletins must be posted five days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make written application to the official in charge, and a copy of the application will be given to the Local Chairman. * * *"

The spirit of the rule was not complied with in this case.

AWARD

The position affected shall be rebulletined.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1936.