

Award No. 962

Docket No. 897

2-ACL-MA-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the bulletin posted at Emerson Shops, Rocky Mount, North Carolina, October 7, 1942, advertising position of machinist, was vague and improper to the extent of arbitrarily changing the provisions and applications of Rule 12 (b).

2. That Machinist C. H. Schulken, the only bidder for the position, was entitled to be assigned to said position created in the machine shop on October 7, 1942, at expiration of the five-day bulletin period established in Rule 12 (e).

EMPLOYEES' STATEMENT OF FACTS: The bulletin in question and referred to above was posted as of the date on which a new employe, L. S. Sturdevant, entered service in the machinists' classification. The same was so worded as to conform only with the general policy for inducting new employes into the service by bulletin. Such limited concern of the bulletin represented an amendment of language formerly used during the past years, under the same rule, and in effectuation of the same purpose. Mr. Sturdevant, the new employe, was assigned to a newly created job in the machine shop from 7:00 A. M. to 3:30 P. M., forty-eight hours per week, effective October 7, 1942.

Machinist C. H. Schulken, employed on the third shift in the roundhouse, inclusive of Sundays and holidays, was the only applicant bidding under the aforementioned bulletin. Schulken has a seniority date of December 1, 1936, which date he has continuously retained since completing an apprenticeship at Emerson shops. His bid was filed in compliance with Rule 12 (e), October 9, 1942, and at expiration of the five-day bulletin period, October 13, 1942, he was assigned to work in the erecting shop.

Schulken had informed the committee that his bid was intended as application for the job added in the machine shop and then held by L. S. Sturdevant. Therefore, when assigned to the erecting shop, he immediately protested such a curtailment of his claimed rights under Rule 12 (b). The committee then intervened to further protest the vagueness of the bulletin and to contend that, since the job entailing a bulletin was in the machine shop, Schulken should be assigned to the machine shop in accordance with his bid. Denial of the committee's request resulted in a continuance of Schulken in the erecting shop and Sturdevant in the machine shop.

in the mechanical department has greatly increased, and as a consequence it is necessary that the carrier make every effort to meet the demands, and carrier must use every employe to the best advantage for efficiency, and the carrier contends that by the rules of the agreement carrier has met the provisions of the agreement and no rule of the agreement has been violated, and respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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 employe 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 were given due notice of hearing thereon.

The situation disclosed in this proceeding, as described by the carrier representatives themselves, supports the following conclusions: that the bulletin of October 7, 1942, was "vague and improper," as alleged; that Machinist Schulken had every reason to believe that the advertised position was that to which Machinist Sturdevant was temporarily assigned in the machine shop on October 7, 1942; and that the claimant, as the only bidder, was entitled to be assigned to this position upon expiration of the five-day bulletin period.

At the hearing it was agreed by the parties that the position involved no longer exists, and that the claim is merely for a finding that the operative agreement had been violated. Not only is there full justification for such a finding, which is hereby made, but there is adequate basis for cautioning the carrier against the continuance of such confusing procedure in the posting of bulletins for vacancies or new positions.

AWARD

Claim sustained in conformity with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1943.