

Award No. 1793
Docket No. 1706
2-AT&SF-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman G. A. Lindblad was unjustly denied his contractual rights of being promptly assigned to the position which he acquired by bid during the period December 3 and 9, 1952, inclusive.

2. That accordingly the Carrier be ordered to:

- a) Make the aforesaid employe whole by compensating him additionally in the amount of eight (8) hours' pay for each date, December 3 and 4, 1952 at the applicable hourly rate, account having been denied the right to work these regular work days of the new position acquired by bid.
- b) Make the aforesaid employe whole by compensating him additionally in the amount of four (4) hours' pay at the applicable rate for service performed from 8:00 A. M. to 4:00 P. M., Saturday, December 6, 1952 account this service subject to be paid for at overtime rate in lieu of straight time rate paid.
- c) Make the aforesaid employe whole by compensating him additionally in the amount of four (4) hours' pay at the applicable rate for service performed from midnight Saturday, December 6th to 8:00 A. M., Sunday, December 7, 1952 account this service subject to be paid for at overtime rate in lieu of straight time rate paid.
- d) Make the aforesaid employe whole by compensating him additionally in the amount of four (4) hours' pay at the applicable rate for service performed from midnight Sunday, December 7th to 8:00 A. M., Monday, December 8, 1952 account this service subject to be paid for at overtime rate in lieu of straight time rate paid.
- e) Make the aforesaid employe whole by compensating him additionally in the amount of eight (8) hours' pay at the appli-

to the position at Sterlington as soon as was reasonably possible under the circumstances and conditions with which it was confronted.

Award: Claim denied."

It has been a practice of long standing at Chanute, in the handling of car department employes in the train yard that the successful bidder for position shall protect his former assignment, while under advertisement, or until bids are closed, at which time he is then placed on his new assignment. The records indicate this practice at Chanute has been in effect at least since 1943. The practice in effect at Chanute, as outlined above, has never been contested by the organization until the instant dispute.

While it is the carrier's position that assignment to a position, as contemplated by Rule 16, does not carry with it the right to immediate transfer to it, the carrier recognizes that the transfer should be made within a reasonable period of time, determined by the facts and circumstances surrounding the individual case. In the instant case, the claimant's position was advertised December 2, 1952, bids closed 10:00 A. M. December 8, 1952, and the claimant was actually placed on his new position at 8:00 A. M. December 9, 1952. The carrier wishes to point out to the Board that the bids were closed on the claimant's position December 8 or six days subsequent to date advertised, not four (4) days as contemplated by Rule 16(a). It has been a mutually accepted practice in the application of Rule 16(a) not to consider Saturday or Sunday as one of the four (4) days that bulletins must be posted, i.e., the four (4) days referred to in Rule 16(a) have been considered as working days.

As previously stated in the carrier's submission, agreement rule 16 does not provide any time limit during which an employe must be taken from the position which he has been holding and placed on the position that he has bid in. Inasmuch as the Board is limited to an interpretation of existing agreement rules and is not privileged to sit as a court of equity in this case (see Third Division Awards 4250, 5703 and 5994, the "Opinion of Board" in the latter award reading in part as follows:

"We are dealing with Rules as written. Equity cannot be considered. The Rules here considered are not ambiguous. If the Rules are to be changed it must be done under the Railway Labor Act."),

it is obviously bound to render a declining award.

The carrier asserts that the handling accorded the claimant G. A. Lindblad in this case, in no way violated Rule 16 or any other rule of the agreement, and in the absence of any rule agreement or otherwise, supporting the employes' claim, the carrier submits that should the Board assume jurisdiction notwithstanding failure of employes to confer, it should deny the claim for want of equity and support of the agreement.

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.

Claimant is regularly employed as a carman at Chanute, Kansas, with a seniority date of September 22, 1950. A vacancy was bulletined which was bid in by claimant as of December 2, 1952. He was not permitted to assume the position bid in until December 9, 1952, resulting in the present claim.

It appears from the record that as soon as claimant was determined to be the successful bidder, carrier on the same day advertised for bids on the relief carmen's position held by the claimant. Bids were closed for this position on December 8, 1952 and claimant was assigned to work his new position on December 9, 1952, at 8:00 A. M.

Memorandum of Agreement No. 1 to Rule 16(c), current agreement is the controlling contract provision. It states in part:

"It is contemplated under this rule that assignments to positions be made promptly after bids close."

The foregoing provision contemplates that an employe becomes the owner of a position as soon as it is determined that he is the successful bidder. The contention of the carrier that it has a reasonable time to make the transfer to the new assignment applies only when the time of transfer is in no manner specified. The word "promptly" means "immediately" or "at the appointed time." Clearly the appointed time is the time when the employe has been designated the successful bidder under the foregoing rule. The agreement was violated.

The organization clearly changed the claim in processing the appeal to this Board. This it may not do. Award 1422. It is contemplated that a sincere and honest effort be put forth by the parties to the dispute to adjust their differences before it may be brought to this Board. The organization concedes this point and asks the Board to consider only such parts of the dispute that were handled in conference on the property. This Board will not handle disputes piecemeal. The parties are required to consider and confer on the whole claim on the property and, upon their failure to do so, it is required to treat the appeal as prematurely brought. Under the circumstances here shown, the dispute will be remanded for conferences and adjustment on the property.

AWARD

Claim remanded for conference and adjustment on the property as per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1954.