

Award No. 2294

Docket No. 2151

2-ACL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Electrical Workers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement, Electrician E. C. DeHart, was unjustly deprived of his seniority rights when the Company failed to assign him to Job No. 29 advertised in Bulletin No. 155, posted on September 25, 1952, at the expiration of bulletin as he was the senior bidder.

2. That the Carrier be ordered to compensate the aforesaid employe, Mr. E. C. DeHart, the difference in Electricians' pay and that paid electricians who are required to sign Federal Inspection Reports for all time Job No. 29 has been worked by a junior employe, since September 29, 1952.

EMPLOYEES' STATEMENT OF FACTS:

Mr. E. C. DeHart, hereinafter referred to as the claimant, has been employed continuously since July 10, 1951, as an electrician at Jacksonville, Florida.

On September 25, 1952, carrier issued Bulletin No. 155 advertising Job No. 29 for position as electrician.

Claimant placed his bid on this job with the proper authorities prior to the expiration date of said bulletin and was found to be the senior applicant.

The assignment of a junior employe to Job No. 29 was protested by Local Chairman A. C. Shott to General Foreman Holland and Acting General Foreman White without receiving satisfaction, and their decision was appealed to Mr. D. B. Lacy, master mechanic, Jacksonville, Florida, under date of October 9, 1952.

On October 14, 1952, Master Mechanic Lacy replied to Local Chairman Shott declining claim.

should know also that any other electricians on this or any other shift are paid the differential as provided in this rule when they perform the work stipulated therein.

Respecting Item 2 of the claim, as will be noted from General Chairman Corbin's letter of January 9, 1953, in which he outlines the claim, as well as his subsequent letters, no request is made or presented for any monetary adjustment in pay. Likewise, in the general chairman's handling on the property no such request or claim was mentioned or discussed. Thus, it will be observed, Item 2 of the claim has not been handled in accordance with the Railway Labor Act and it is not, therefore, a proper one before your Board.

In view of the above facts, carrier does not believe this entire claim is a proper one to be brought before your Board, inasmuch as Item 1 is without merit by the written admission of General Chairman Corbin and Item 2 has not been handled in accordance with the provisions of the Railway Labor Act.

POSITION OF CARRIER: At the outset carrier frankly admits it is confused as to the basis on which the claim is being made. The organization has stated, in writing—and orally in conference, that there is no differential in pay involved and yet that is the very issue they have presented to your Board.

As will be observed from Bulletins Nos. 155 and 111, the rest days of the job in question were Sundays and Mondays. The rest days of Mr. DeHart, prior to being assigned the job covered by Bulletin No. 155, were Thursdays and Fridays, which rest days are considered by many as being less desirable than Sundays and Mondays; in fact, first, Saturdays and Sundays, and second, Sundays and Mondays, were recognized in the 40-hour week agreement as being the most desirable rest days. Carrier, recognizing that principle, bulletined the job and awarded it to the senior bidder, Mr. DeHart.

Carrier made sincere and honest efforts to adjust this claim, as will be noted above, and efforts at adjustment had the full sanction and approval of the organization's representative. As a matter of fact, it will be observed that General Chairman Corbin himself helped frame Bulletin No. 111 which cancelled Bulletin No. 155.

Additionally carrier contends, and such contention is verified by the records, that the senior bidder, Mr. E. C. DeHart, was assigned the position outlined in Bulletin No. 155, posted on September 25, 1952.

Furthermore, carrier considers the claim improperly filed under the provisions of the Railway Labor Act in that letter of December 29, 1955 from Mr. Fox, President, Railway Employees Department, (signifying intention to file ex parte submission with this Division) provided carrier with its first knowledge that the complaint involved claim for monetary recompense.

In view of these glaring facts, Items 1 and 2 of the statement of claim can only be assumed to be totally without merit and carrier respectfully requests that your Board dismiss the claim on those grounds.

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.

In part 1 of the claim it is contended that Electrician E. C. DeHart was unjustly deprived of his seniority rights when, after he was the senior bidder therefor, carrier failed to properly assign him to job No. 29, advertised for bids by Bulletin No. 155 posted September 25, 1952. Part 2 is a monetary claim asking that DeHart, because of the foregoing, be compensated the difference between electrician's pay, which he received, and that paid electricians who are required to make and sign Federal Inspection Reports. See Rule 28, Section "G" (3) of the parties' agreement.

First carrier claims the filing of a declaration of intent by the organization to the effect that within thirty (30) days it intends to submit a dispute to this Division does not meet the requirements of Section 2 of Article V of the parties' agreement of December 15, 1954 and therefore the dispute is barred. Such declaration of intent, dated December 29, 1955 was filed with the Division. This same question was raised in Docket 2152 on which our Award 2292 is based. What we held therein is controlling herein. We find this contention to be without merit.

Claimant has been employed by carrier as an electrician at Jacksonville, Florida since July 10, 1951. On September 25, 1952 carrier issued and posted its Bulletin No. 155 at Jacksonville, advising "All Electricians" that "Bids will be accepted for a period of five days from date for Electrician's Job No. 29 to work first shift, rest days Sunday and Monday." This had become necessary under Rule 12(e) of the parties' agreement because Electrician J. P. Saylor, who had been assigned to and occupied said position, had been promoted to a foreman's position, thus creating a vacancy thereon. The job Electrician Saylor was occupying, referred to as Job. No. 29, was recognized as on the north freight lead and included in its regular duties were those relating to Federal Inspection Reports. Claimant DeHart was admittedly the successful senior bidder therefor under Rule 12(b) of the parties' agreement, and carrier says it assigned him thereto, but it is apparent he was not given the same duties as had been regularly performed by Electrician Saylor prior to his promotion.

[The prime objective of bulletining positions, as required by Rule 12(e), is to enable employes eligible therefor to intelligently exercise their seniority rights thereto, as Rule 12(b) provides they may, if they find such position to be desirable. In order to know whether a position is desirable employes must be given sufficient information about it, when it is bulletined, to form an intelligent opinion in regard thereto in this respect.] This would require such bulletin to contain at least information regarding the hours of duty, the work and rest days thereof, and the duties to be performed. We think, when a vacancy arises on an existing job and it is bulletined as such, that an assignment thereto carries with it the hours of duty, workdays and rest days, together with the duties that were regularly assigned to and performed by the previous occupant thereof. This does not mean that by establishing a position and assigning certain duties thereto that thereby they become permanently fixed. Carrier can reorganize its work whenever it finds necessity for doing so, and may change the duties of a position, but, when it does so, it becomes a new job for the purpose of Rule 12 (b) and when bulletined in accordance with Rule 12(e) that fact must be evident from the information contained therein. [If this were not true seniority would have little value for employes bidding on either new jobs or vacancies.] See Award 2148 of this Division. In view of the foregoing we find part 1 of the claim to be meritorious.

Part 2 of the claim is for a differential in pay, a claim never presented and handled on the property. Apparently the original claim, as evidenced by A. C. Shott's letter of October 9, 1952 to D. B. Lacy, Master Mechanic, asked for compensation at time and one-half, above and beyond his regular rate for work he should have performed. Such claim for monetary allowance is without merit and not presented here. We find part 2 of the claim to

be without merit because it was never properly presented and handled on the property.

AWARD

Claim Part 1 sustained. Part 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.