

Award No. 2589
Docket No. 2359
2-NYC&StL-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 23, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That in conformity with the current agreement The New York, Chicago and St. Louis Railroad Company, Wheeling and Lake Erie District, be ordered to bulletin two newly created Car Inspector positions in the eastbound Brewster Yards which were improperly filled by the assignments thereto of Carmen Harry W. Caldwell and Nicholas A. Latino, effective on and since May 18, 1955.

EMPLOYEES' STATEMENT OF FACTS: The New York, Chicago and St. Louis Railroad Company, Wheeling and Lake Erie District, hereinafter called the carrier, made the election on May 12, 1955 to advertise in the carmen's craft at Brewster, Ohio for applicants desiring to fill three newly created car inspectors and repairers positions in the eastbound yards and repair track. The election was also made by the carrier that these positions would work 8 hours per day, 5 days per week, with off days Sunday and Monday and which actions of the carrier are confirmed by Bulletin No. 96 and Bulletin No. 97.

On May 18, 1955, the carrier assigned Carman N. Latino to the position advertised in Bulletin No. 96 and Carmen H. Caldwell and B. Raff to the positions advertised in Bulletin No. 97. Incidentally, the positions to which Carman E. Raff was assigned has since been cancelled and thus that position is not involved herein.

This dispute has been progressed with the carrier up to and including the highest officer designated thereby to handle such disputes and this officer consequently declined to adjust it.

the classification in which they hold seniority rights, which letter agreement is designated as Addendum "F" and made a part hereof.

(8) Memorandum of Agreement dated March 1, 1949 providing that Renos B. Gerber be assigned as flue welder in Brewster Shop, which memorandum of agreement is designated as Addendum "G" and made a part hereof.

(9) Letter from Mr. George Durham to Mr. Frank J. Bash, dated January 23, 1943 in connection with physical examinations, which letter is designated as Addendum "H" and made a part hereof."

The letter agreement of August 13, 1945, is not mentioned in above quoted Paragraphs 1 to 9, inclusive, and therefore, by express stipulation, is no longer in effect.

However, if the letter agreement of August 13, 1945, were still in effect, the carrier has meticulously complied with its terms by identifying the work to be performed.

The carrier has shown that Bulletins 96 and 97 were properly prepared, posted, and that employes bidding thereon were properly assigned, all in accordance with the provisions of the current agreement. The claim is therefore without merit and should be denied.

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 the dispute were given due notice of hearing thereon.

This claim requests that carrier "be ordered to bulletin two newly created car inspector positions * * * which were improperly filled * * *". It is an agreed fact that the jobs in question were filled after having been bulletined in the following language: "For position as one (1) Car Inspector and Repairer—Principle location of work to be in Eastbound Yards and Repair Track. Duties to consist chiefly in inspecting and classifying cars in yards and repairing cars on Repair Track."

The employes depend on that part of Rule 12(c) which says "Separately identified assignments * * * will be made by bulletin." It is contended that the alternatives posed by the language of the bulletin violate the principle of seniority by not fixing definitely the place and nature of the work to be done.

The carrier's reply to this argument is, that at Brewster Yards it has always been the practice to meet the fluctuating work demands by having some men available who may move from the repair track to the yards and vice versa depending on where they are needed. Also that the job defined covers only one seniority district and it is all carmen's work.

Both parties have offered as exhibits old bulletins; those of the employees showing single locations and single principal duties, while those offered by the company contain language comparable to that in the present challenged bulletin.

The union fears that joining duties as in the present bulletin would result in misleading the bidder who might be held to the undesirable part of the joint job described. The company is equally concerned because it does not want to be confined in sending carmen to do carmen's work wherever it may arise.

In Award 1440 the carrier described the occupation merely as "carmen". It was decided, after finding that carmen as a practice worked both on the repair track and inspecting in the yards, that the job should be rebulletined in keeping with the practice.

We find that similar facts exist here as regards the practice of moving men from the yards to the repair track and back again. We find further that the bulletin challenged here does adequately describe the job established. It fixes, "the duties to consist chiefly in inspecting," etc., and adds the repair track work secondarily. Perhaps the addition of the words "as needed" at the end of the phrase would be more expressive but it appears from the evidence that the parties have already impliedly accepted this idea in the bulletins and bids which they have followed heretofore.

AWARD

The claim is denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1957.