

Award No. 3111
Docket No. 2875
2-PULL-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT. A. F. of L.-C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, The Pullman Company at the Mechanic Shop, Chicago, failed to bulletin a vacancy of more than 10 days' duration, instead they assigned Electrician E. F. Sedwick to fill this vacancy.

2. That accordingly The Pullman Company be ordered to bulletin this vacancy.

3. That accordingly The Pullman Company be ordered to compensate any Electrician who is assigned to this vacancy at the time and one-half rate of pay until the vacancy is bulletined.

EMPLOYES' STATEMENT OF FACTS: Electrician position No. 7 at the mechanic shop, Chicago, became a vacant job starting on June 16, 1956 (see Exhibit A, page 16). This vacancy was not bulletined since it became vacant on June 16, 1956.

Foreman W. M. Luther, instead of bulletining this vacancy in accord with Rule 42 when he had an electrician to fill this vacancy, he assigned electrician E. F. Sedwick to this vacant job on September 24, 1956 (see Exhibit A, page 17).

As a result, under date of October 22, 1956, a claim was submitted requesting a hearing on the claim. The hearing was held on December 3, 1956; a copy of this hearing record is submitted herewith and identified as Exhibit A.

The claim filed in behalf of "any Electrician" who is assigned to the vacancy to which Sedwick was assigned is 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant asserts (1) that the Company violated Rule 42 of the July 1, 1948 Agreement with the Brotherhood by assigning Electrician Sedwick to an unbulletined vacancy of more than 10 days' duration, and (2) requests that the Company be ordered to bulletin such vacancy and (3) compensate the electrician who is assigned to this vacancy at the time and one-half rate until the vacancy is bulletined.

Inasmuch as the position in question was abolished December 28, 1956, part (2) of the claim has become moot.

Electrician Lutkin retired on August 1, 1956 from position 7 in the Light-A.C., Department, and under the provisions of Rule 42 of the above-mentioned agreement the Company should have promptly bulletined the resulting vacancy which was of more than ten days' duration. The Company's failure to comply with Rule 42 is based on an agreement between the foreman and local chairman of the organization that it would be left open until a new employe was available.

The Company also contends but the organization denies, there was an accepted practice in seniority districts such as the Chicago Mechanic Shop and Calumet Shop that vacancies would not be bulletined as required by Rule 42 when there were no new employes available. This claim of past established practice lacks evidentiary support, and in any event it may not properly be invoked to alter the clear and unmistakable language of Rule 42. Prior awards of this Board too numerous to mention recognize the principle that past practice of the parties may not be utilized to impair the plain language of an agreement.

A hearing on the instant claim was held on the property on December 3, 1956 in which the local chairman acknowledged an agreement with Foreman Luther that the vacancy created by Electrician Lutkin's retirement on August 1, 1956 would not be bulletined until a new employe was available.

Electrician Van Grimbergen exercised his seniority by displacing Electrician Sedwick as head electrician in the Light-A.C. Department on September 24, 1956. Thereupon Sedwick was temporarily placed in the Lutkin vacancy which had remained open and unbulletined since August 1. Sedwick filled this temporary position for five days through September 28, during which he did not exercise his displacement rights as he was entitled to do under Rule 46.

Rule 46 provides that a displaced employe must exercise his displacement rights in accordance with his seniority within 5 calendar days after being notified of his displacement or forfeit the right to make claim for any loss of compensation resulting from his failure to exercise displacement rights; and any employe who fails to exercise his displacement rights within the required time shall be assigned to any vacant position in his class. Since Sedwick did not exercise his displacement rights at any time, and inasmuch as the Lutkin vacancy had, by mutual agreement at the local level, been held open without bulletining, Sedwick was we think properly assigned to permanently fill that vacancy commencing October 22, 1956. Sedwick did not fill this permanent assignment immediately after September 28, since he was by mutual agreement between the Company and the Organization appointed to fill Van Grimbergen's position as head electrician from October 1 to October 22, while Van Grimbergen was on vacation.

An agreement or understanding between local representatives may not alter or annul a plain contractual provision of the carrier and the organization such as is found in Rule 42 with respect to bulletining vacancies. Nevertheless, we conclude, on the basis of the record in this case, that a monetary claim on behalf of Electrician Sedwick is without support for two reasons; (a) for failure to exercise his displacement rights he forfeited any monetary claim in accordance with the provisions of Rule 46; and (b) the organization is estopped from asserting such claim by reason of the agreement between its local chairman and the foreman that the Lutkin vacancy need not be bulletined until a new employe was available.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1959.