

Award No. 3180
Docket No. 3055
2-MKT-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

DISPUTE: CLAIM OF EMPLOYEES:

(a) That the Missouri-Kansas-Texas Railroad Company violated the controlling agreement when they abolished the positions of Electricians (Power Plant) and assigned Shop Electricians to perform the work of Power Plant Electricians.

(b) That accordingly the Railroad Company be ordered to compensate Power Plant Electricians S. J. Tondera, S. E. Paine, O. W. Moroski, and W. A. Pearson, Jr., for all time lost from 7:00 A. M. March 26, 1957, until the Power Plant Electricians are returned to their former positions.

EMPLOYEES' STATEMENT OF FACTS: S. J. Tondera, S. E. Paine, O. W. Maroski and W. A. Pearson, Jr., hereafter referred to as claimants, were employed by the Missouri-Kansas-Texas Railroad Company, hereinafter referred to as the carrier, as electricians in the power plant at Waco, Texas.

The claimants' names were carried on the seniority roster as Electricians (power plant) in conformity with the provisions of the current agreement. See submitted Exhibit A.

On March 14, 1957, the carrier posted a notice abolishing the claimant positions, effective at 7:00 A. M., March 26, 1957. Copy of this notice submitted herewith and identified as Exhibit B.

On March 14, 1957, the carrier posted Bulletin No. 40 to shop employees advertising 4 positions for electricians to operate power plants and perform electrical repair work. Copy of Bulletin No. 40 submitted herewith and identified as Exhibit C.

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 waived right of appearance at hearing thereon.

In this docket claim is made for four power plant electricians of Warden Shop to be paid for all time lost since March 26, 1957 until they are returned to their former positions.

On March 14, Bulletin 39 was posted stating, "Effective 7:00 A. M., March 26, 1957 following jobs at Power Plant are abolished until further notice: Employes affected 4 Power Plant Electricians, S. S. Tondera, S. E. Paine, O. W. Maroski, W. A. Pearson, Jr."

On that same date Bulletin No. 40 was posted, advertising that bids would be received for four electricians who would, in addition to operating the power plant, be qualified to make repairs to various electrical devices which would be delivered to the power house. The claimants did not bid on the posted bulletin, whereupon the carrier assigned to the work four shop electricians whose bids are shown.

The organization contends that Rule 13 has been violated; particularly the part stating "when new jobs are created * * * the oldest employes shall if sufficient ability is shown by trial * * * be given preference."

The organization also argues there has been a violation of Rule 23 reading "(a) seniority of employes in each craft or subdivision thereof will date from * * * time * * * employed. (b) seniority * * * shall be confined to the point employed in each of the following classifications * * * Electricians—Electricians (Power Plant)."

In defense the carrier argues that we are barred from considering the claim because as it was originally phrased the time claimed was to be cut off on April 15, 1957 and now is being progressed for all time lost since March 26, 1957.

From the correspondence between the parties beginning with the local chairman's letter of April 18, 1957, wherein he advises "that all power plant electricians are claiming and will continue to claim time" we conclude that carrier has known at all times that this was a running claim.

Carrier urges that its action was taken only after conference and agreement with General Chairman Jones which is denied by the organization. Apparently whatever understanding was reached was not thereafter confirmed in writing, because the docket does not contain any letter as is customary. The burden of proof rests on the one asserting and has not been met in this instance.

Carrier also argues that any distinction between Electricians and Power Plant Electricians was liquidated when their rates of pay were made the same after negotiation. To pursue this reasoning to a logical conclusion would result in a finding that if the grievants were electricians there would be no

need to bulletin a change in the details of their work at the power house, because they would not be new jobs. It would be the same old job with new duties added, to be performed by "electricians" which the grievants presumably were, because they were being paid as such. There is a further inconsistency in the wording of the bulletin wherein "power plant electricians" jobs are abolished.

We conclude that the carriers actions herein violated the seniority of the grievants as "Electricians (Power Plant)" as spelled out in Rule 23 separately from that of "Electricians".

AWARD

Claim sustained to August 1, 1957, the date of closing of the power plant.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1959.