

Award No. 3742

Docket No. 3752

2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS
UNION OF AMERICA, AFL-CIO**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: In the "Y" Yard at McKees Rocks, Pa. the carrier is upgrading box cars on the position system. The foreman has refused to advertise these jobs. This is a violation of agreement Rule 39, paragraph (a). The organization requests the carrier to abide by the agreement and advertise the box car positions in the "Y" Yard.

EMPLOYES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa. and is known as Case M-251.

Rule 39, paragraph (a) is being violated when the carrier refuses to advertise positions when classified or position work is being used at the "Y" Yard in McKees Rocks, Pa.

The carrier in the past has always advertised position work when a new order of cars are brought into the shop for repairs.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company covering the carmen, their helpers and apprentices (Car & Locomotive Departments), copy of which is on file with the Board and is by reference hereto made a part of these statement of facts.

POSITION OF EMPLOYES: The carrier and the organization did enter into an agreement that allows the carrier to use classified or position system at any point where the work can be performed satisfactorily. This rule reads as follows:

RULE 32

Classified or Position Work

"The Company reserves the right to extend the so-called classified

"The record shows that the issue presented by the claim is now moot so the claim will be dismissed."

The carrier also directs the attention of the Board to the following excerpts from First Division Awards 12023 and 13331:

AWARD 12023:

"This docket involves only a request for the reinstatement of former Engineer Clark. There is no request for the payment of any past wages. It appears that Mr. Clark died September 21, 1947. The question presented has become moot."

AWARD 13331:

"At the hearing it appeared that the claimant is deceased. Thus the issue as to his seniority rights is moot * * *."

In the instant case, the upgrading of box cars was discontinued by the carrier in November 1959. Notice of intention of the organization to file an ex parte submission in connection with this claim was given to the Board under date of April 22, 1960. Therefore, the claim was moot before the jurisdiction of the Board was invoked.

CONCLUSION:

The carrier has shown that the work complained of in this case was no different than other light or running repair work performed daily by carmen in the "Y" Shop. Further, that when new jobs were established, a bulletin was issued advertising for ten additional freight car repairmen to work on any and all light car repair work. Consequently, there was no violation of the advertisement rule of the agreement, as contended by the organization.

The carrier has also shown that the upgrading work at "Y" Shop was discontinued prior to the time the organization invoked the services of this Board and that the question has now become moot. Awards of the National Railroad Adjustment Board have been cited in support of carrier's position.

The carrier, therefore, respectfully submits that the request of the employes be dismissed.

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.

In the "Y" Yard at McKees Rocks, Pa., the Carrier is upgrading box cars on the position system. The foreman refused to advertise these jobs.

It is the claim of the carrier that the question raised by the organization is now moot as far as this case is concerned.

The question may be moot as to this case, but the agreement covers claims of this kind, and so that carrier and the organization will know how to handle the same type of case in the future, we feel it necessary to render a decision.

Rule 39, paragraph "A" was violated by the carrier when it refused to advertise jobs for upgrading box cars at the "Y" Yard in McKees Rocks, Pa.

This was acknowledged by the Carrier, when it advertised in the past, when a new order of cars was brought into the shop. See Employees Exhibits No. 1 and No. 2.

AWARD

The position of the organization is sustained, and the Carrier is required to advertise the jobs as asked for by the Employees.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1961.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3742

The majority are gravely in error in the award rendered in this dispute.

The Findings reads in part:

"* * * * *

Rule 39, paragraph 'A' was violated by the carrier then it refused to advertise jobs for upgrading box cars at the 'Y' Yard in McKees Rock, Pennsylvania.

This was acknowledged by the carrier, when it advertised in the past, when a new order of cars was brought into the shop. See Employees Exhibits No. 1 and No. 2."

It is apparent the majority have bottomed their award on one isolated case wherein a bulletin was posted, concerning which the carrier stated, without dispute by the organization, that "a complete check of Bulletins for the past ten years failed to find any other similar advertisement involving work at the "Y" Shop so that the carrier continues to deny that in the past such specific work has always been advertised at that location, and precedent cannot be established on the basis of one isolated advertisement."

The work performed under bulletin dated January 24, 1958 (Employees' Exhibit No. 1) involved box cars and required the application of veneer floors, plywood lining, threshold plates and other miscellaneous repairs and end straightening, whereas in the cars involved in the instant claim no such repairs were required and in most cases involved only patch work on the floors and sidings as required.

Rule 39(a) reads as follows:

"(a) All vacancies and new positions in the ranks of the em- :"

ployes will be bulletined in agreed upon places for a period of five (5) days. All employes may bid on such vacancies and new positions on the basis of their seniority standing at the point employed. The oldest man, in his class or craft, bidding on such vacancies or new position will be awarded the position, providing he possesses the necessary fitness and ability. The name of the successful applicant will thereafter be bulletined for a period of five (5) days."

The record shows the carrier fully complied with the requirements of Rule 39(a) on April 12, 1959, Bulletin 134, when 10 regular assignments of freight car repairers were put up for bid.

The award is patently wrong and we dissent.

H. K. Hagerman

David H. Hicks

Paul R. Humphreys

William B. Jones

T. F. Strunck