

Award No. 3780
Docket No. 3476
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. of L.-C. I. O.**

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

DISPUTE: CLAIM OF EMPLOYES: At McKees Rocks Y Shop there is a seven day agreement. This means men at this location work seven days a week. Some men work Monday through Friday and other men hold assignments that work Saturday and Sunday.

Some time ago the wreck-crew jobs had been abolished but now have been re-activated. When this was done these wreck-crew men were put on the Monday through Friday jobs.

Now when the furlough came along this meant a change at McKees Rocks "Y" Shop. The wreck-crew men are still being kept on the Monday through Friday jobs while older men are required to work the Saturday and Sunday jobs.

This is a violation of the present agreement Rule 40, paragraph (f) as the older men should be allowed to bump the Monday through Friday jobs.

The Organization would like this matter straightened out at once.

EMPLOYES STATEMENT OF FACTS: This case arose at McKees Rocks, Pa., and is known as Case M-207.

The organization and carrier have an agreement for the "Y" Yard establishing seven (7) day assignments for this point. Not all the jobs at this point are seven (7) day assignments.

Sometime ago the carrier had abolished all wreck-crew jobs but now has re-activated these jobs. When these jobs were re-activated the wreck-crew men were put on jobs that worked Monday through Friday but these jobs were not the ones involved in the seven (7) day assignments.

Along came a furlough and the carrier insisted that these wreck-crew men were going to work the Monday through Friday assignments regardless of their seniority. This meant that senior employees that were either being

Award 6976:

"We feel that * * * rest days are a condition of and attach to a position, Award Nos. 5811 and 6408. * * *"

CONCLUSION

Carrier has shown that the senior carmen discussed in this case desired to exercise seniority rights and displace junior carmen, in their seniority district, from their Monday through Friday carmen assignments, which were also wreck crew assignments. These senior carmen, however, were unwilling to accept the wreck crew responsibilities which accompanied these positions and under such circumstances the carrier would not consent to this displacement. The carrier has also shown that employees bidding for or displacing on any assignment have always been and still are required to accept all of the conditions which accompany that assignment. It is carrier's prerogative to determine job requirements and no employee, senior or junior, can choose only the desirable portions of those requirements and contend for an assignment on that basis. It is all or nothing and the burden of proving the present contention rests with the employees.

Awards of the Third Division, National Railroad Adjustment Board, have been cited in support of carrier's position.

The carrier respectfully submits that the request of the organization 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 40(f) of the Carmen's agreement provides:

"In case of a reduction in force or the abolition of a position, employees affected shall be allowed to exercise their seniority in displacing junior employees at their home points."

True, as asserted by carrier, there is nothing in that provision which permits the senior employee to pick and choose only the desirable portions of a junior employee's assignment and he must take all the conditions of the job he displaces. But the fact, if true, that the senior carmen who had been furloughed "did not want to assume all the conditions of work performed by junior employees", as asserted by carrier, is not ground for denying them the right to bid in the advertised positions to which their seniority entitled them. If such "conditions of work performed by junior employees" properly attached to

the positions, more direct means for insuring performance existed without making it necessary for carrier to violate the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1961.