

Award No. 4104
Docket No. 3983
2-CMStP&P-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The agreement was violated when the Chicago, Milwaukee, St. Paul & Pacific Railroad Company assigned Telegraph Lineman E. T. Reilly, with seniority rights only on Lines East, to perform Telegraph Linemen's work in the seniority district of Telegraph Linemen on Lines West, a separate seniority district from Lines East.

2. That accordingly the Carrier be ordered to compensate Telegraph Lineman R. W. Van Winkle at the applicable rate of pay in the amount of hours equal to those the Carrier paid Telegraph Lineman E. T. Reilly and such expenses that Mr. Reilly incurred for the performance of Telegraph Work at the Milwaukee Freight House at Tacoma, Washington, starting March 7, 1960, and continuing until the said work was completed.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, maintains two (2) seniority districts of telegraph and telephone employees. One district is known as Lines East of Mobridge and the other is known as Lines West including Mobridge.

Mr. R. W. Van Winkle, hereinafter referred to as the claimant, is employed on Lines West and holds a seniority date on the Lines West seniority district of 4-2-1953.

On March 7, 1960, the carrier assigned Lineman E. T. Reilly, headquartered at Milwaukee, Wisconsin and holding seniority in the Lines East district only (seniority date 5-7-1955), to work at the Tacoma, Washington freight house (Lines West district) to perform linemen's work in connection with the transfer of the Seattle relay office to Tacoma.

tory he also gained knowledge of various test equipment and the proper application and use of same.

It will be readily apparent, by that set forth above, that Reilly was fully qualified to perform "inside plant work" or, in other words, was fully qualified to perform the work with which we are here concerned, i.e., the installation in the Tacoma Relay office.

On the other hand, however, Claimant Van Winkle was in no way, shape or form qualified to perform "inside plant work" or, in other words, was not qualified for the work with which we are here concerned. Claimant Van Winkle has never performed any "inside plant work" but to the contrary his only experience has been in outside maintenance or, in other words, in "outside plant work" which, as explained previously, consists merely of setting polls, applying cross arms, pulling wire, etc., and to have attempted to utilize Claimant Van Winkle to perform the specialized and exacting work required in connection with the installation in the Tacoma relay office would have been sheer folly on the part of the carrier.

With respect to the question of whether or not it was proper, under the rules of the agreement and in the absence of a qualified employe on Lines West, to temporarily transfer Reilly to Tacoma during the period March 7 to April 1, 1960 to perform the work with which we are here concerned, the carrier wishes to direct attention to Rule 19 of the currently effective electrical workers agreement which reads as follows:

"Employes temporarily transferred from one shop, roundhouse or yard, to another, at the Railway's request, will retain their seniority rights at the place being transferred from and shall be considered the youngest man in service at the point transferred to."

In accordance with aforequoted Rule 19 the carrier may temporarily transfer an employe from one point to another, therefore, when, in the instant case, Reilly was temporarily transferred to Tacoma during the period of March 7 to April 1, 1960 to perform the work with which we are here concerned (work for which no employe on Lines West, including Claimant Van Winkle, was fully qualified to perform) said action was entirely proper and in accordance with the provisions of Rule 19.

The carrier wishes to add that during the period with which we are here concerned, i.e., March 7 to April 1, 1960, Claimant Van Winkle worked full time in his normal capacity as lineman.

The carrier submits that in view of the foregoing it is clearly evident there is absolutely no basis for the instant claim and the carrier respectfully requests that it 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 waived right of appearance at hearing thereon.

In accordance with Rule 72, Section 4 (a) of the applicable labor agreement, the Carrier has established two separate seniority districts of telegraph and telephone employees. One district is known as Lines East of Mobridge (South Dakota) and the other is known as Lines West including Mobridge. Effective as of April 1, 1960, the Carrier's relay office at Seattle, Washington, was moved to Tacoma, Washington. Both locations are within the Lines West seniority district. Prior to the actual moving of the relay office, it was necessary to install certain equipment at Tacoma. The Carrier temporarily transferred Telegraph Lineman E. T. Reilly, whose seniority date is May 7, 1955, and whose home station is Milwaukee, Wisconsin, (Lines East seniority district), to Tacoma to perform part of such preliminary installations. Reilly worked on his temporary assignment from March 7, 1960, to April 1, 1960, and then returned to his home station.

The Claimant, Telegraph Lineman R. W. Van Winkle, holds seniority in the Lines West seniority district with a seniority date of April 2, 1953. He contended that the Carrier violated his contractual seniority rights when it temporarily transferred Reilly to perform work in the Lines West seniority district. He filed the instant grievance in which he requested compensation at the applicable rate of pay in the amount of hours equal to those paid by the Carrier to Reilly during the latter's temporary transfer plus an amount equal to the expenses incurred by Reilly. The Carrier denied the grievance which is now before us for adjudication.

In defense of its action here in dispute, the Carrier mainly relies on Rule 19 of the labor agreement, which reads as follows:

"Employees temporarily transferred from one shop, roundhouse or yard to another, at the Railway's request, will retain their seniority rights at the place being transferred from and shall be considered the youngest man in service at the point transferred to."

We do not construe Rule 19 so as to justify Reilly's temporary transfer from the Lines East to the Lines West seniority district. A careful analysis of the Rule has convinced us that it applies only to temporary transfers within a seniority district but not to temporary transfer between the two seniority districts. Any other interpretation would infringe upon the seniority rights of the employees in the respective seniority districts and thwart their purpose. See: Award 3552 of the Second Division. Hence, the Carrier violated the seniority provisions of the labor agreement when it temporarily transferred Reilly from the Lines East to the Lines West seniority district.

In further support of Reilly's temporary transfer, the Carrier contends that he was specially trained and qualified for the work performed by him and that none of the Telegraph Linemen, including the Claimant, in the Lines West seniority district had the necessary qualifications. It is well recognized in the law of labor relations that management's decisions as to an employee's superior ability to perform a special task must be based on sound and persuasive reasons. See: Selwyn H. Torff, *Collective Bargaining: Negotiations and Agreements*, New York, McGraw-Hill Book Co., Inc., 1953, P. 110. The Carrier's contention that none of the Telegraph Linemen on the Lines West seniority roster, including the Claimant, possessed the necessary skill and qualifications satisfactorily to perform the work in question is not sufficiently supported by the available evidence. It thus becomes unnecessary to rule on the question as to whether the Carrier's action here complained of would have

been justified under other provisions of the labor agreement if, in fact, none of said Telegraph Linemen would have been able efficiently to perform the work under consideration.

In summary, we hold that the Claimant is entitled to compensation equal to the number of hours worked by Reilly during the period of his temporary assignment at Tacoma, Washington, multiplied by the applicable straight time rate. The Claimant's further request for an amount equal to the expenses incurred by Reilly, is however, unjustified and hereby denied.

AWARD

Claim partly sustained and partly denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.

DISSENT OF CARRIER MEMBERS TO AWARD 4104

The pivotal issue in the instant dispute was factual in nature. It was whether or not the Claimant, or in fact any of the Linemen on the Lines-West seniority district, was trained and qualified to perform the work in question. Common sense dictates that the Carrier would not have incurred the expense of sending a Lineman more than two thousand miles from Milwaukee, Wisconsin, to the job site at Tacoma, Washington, if there had been a Lineman already there who was capable of doing the work.

In support of its position, the Carrier stated two facts, which were not disputed at any time during the handling of the claim. One was that the installation work here involved was the first of its kind ever done on Lines West territory. The other was that the Lines East Lineman who did perform the work had been trained at teletype school but that none of the Lines-West Linemen had been.

Since the burden of proving his claim rested with the Claimant, it was incumbent upon him, or his representative, to come forward with proof to rebut the Carrier's reason for not having assigned the work to him. But none was offered until the Petitioner filed his Rebuttal Submission with the Second Division, at which time there was attached as Petitioner's Exhibit 2 a statement which is dated October 19, 1961, four months after the Petitioner had filed his notice of intention to submit this dispute to the Second Division. It is obvious, therefore, that this documentary evidence, which is the only evidence in the record which could have rebutted the Carrier's position, was not considered in the handling of this dispute on the property. Accordingly, this statement was inadmissible by the terms of Circular No. 1 of this Board. Cf. Awards 4153, 4130, 4085, 3462, 3641 and 1996 of this Division. This point was strongly argued to the Referee and we believe that the majority erred in failing to so hold.

A second error was made in awarding compensation to the Claimant inasmuch as he had been fully employed in his normal capacity of Lineman during the period of the claim and thus suffered no monetary loss. See Referee's reply to Opinion of Labor Members Concurring in Part and Dissenting in Part to Award 4112.

F. P. Butler

W. B. Jones

C. H. Manoogian

P. R. Humphreys

H. K. Hagerman