

Award No. 4621

Docket No. 4586

2-C&NW-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. The Chicago and North Western Railway Company on October 8, 1962, deliberately violated Rule #16 of joint agreement between the Chicago and North Western Railway Company and System Federation No. 12, Railway Employees' Department, A.F.L.-C.I.O., effective since July 21, 1921 and amended January 1, 1953.

2. That the Carrier be ordered to compensate at current pro rata rate twenty-six (26) senior Machinists at Clinton, Ia. Shops for all time worked on axle lathe by newly hired Machinist J. R. Schutt, from October 8, 1962 until Agreement is complied with, divided equally among these Machinists.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and North Western Railway Company, hereinafter called the carrier, maintains shop facilities at Clinton, Iowa, where Machinists are employed, including the claimants.

Machinists R. J. Bellmore was a machinist employe of the carrier and held a machinist position of axle-turner in carrier's wheel shop at Clinton, Iowa. Machinist Bellmore resigned in August, 1962. On August 22, 1962, the carrier posted Bulletin No. 151, identifying the position as that vacated by resigned Machinist Bellmore.

On October 8, 1962, the carrier hired J. R. Schutt as a machinist at Clinton, Iowa, and assigned him to the car shop on a position of wheel-borer.

On October 12, 1962, the carrier posted Bulletin No. 181 alleging that newly hired Machinist Schutt had been placed in the position "vacated by Raymond J. Bellmore."

On October 15, 1962, the committee met with the carrier's shop superintendent in an effort to prevail upon him to properly bulletin the position of newly hired machinist Schutt as it was a preferable position desirable to

and should be denied, if for any reason this Board sustains any part of this claim the carrier submits that claimants being fully employed during the entire period on positions paying the same rate, are entitled at most to nominal damages, or \$1. See Third Division NRAB Awards 10730 and 11881.

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.

R. T. Bellmore, a machinist in the wheel shop at Clinton, resigned effective August 24, 1962. On August 22, 1962 the Carrier posted Bulletin #151 for bids on position vacated by Bellmore described as "1 General Machinist—Wheel Shop." No bids were received. Meanwhile John Schutt made application for employment as a machinist on August 20th and passed examinations August 24th.

Positions in this shop were abolished during a strike by telegraphers from August 29 to September 28, 1962 and were restored after termination thereof. Schutt was hired on October 8th and Bulletin #181, posted October 12, 1962, advised of his assignment to position under Bulletin #151 account no bids received.

The Employes contend that Schutt was not assigned to the position vacated by Bellmore, which consisted primarily of Axle turning, but to a new position of wheel borer, which should have been bulletined. This contention is inconsistent with the statement of claim, which seeks compensation for "all time worked on axle lathe" by Schutt. Thus the claim is on account of his performance of the work which the employes assert constituted Bellmore's position, not because of work other than comprehended thereby.

A claim cannot be sustained upon a contention which is inconsistent with what is claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 11th day of December, 1964.