

Award No. 4820

Docket No. 4797

2-MUS-EW-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O. (Electrical Workers)
MEMPHIS UNION STATION COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated, particularly Rule 20, when the Memphis Union Station Company failed to recall furloughed electrician F. D. Novel to service as an electrician on January 1, 1963.
2. That the Memphis Union Station Company be ordered to restore F. D. Novel to service with his seniority and all other rights unimpaired and paid for all time lost retroactive sixty days from December 2, 1963, the date the claim was made, including:
 - “(a) Restoration of vacation rights.
 - “(b) Paying the premium for Health & Welfare and death benefits for period of claim.

EMPLOYEES' STATEMENT OF FACTS: Electrician F. D. Novel, hereinafter referred to as the claimant, was employed by the Memphis Union Station Company, hereinafter referred to as the carrier, with a seniority date of March 25, 1937 as an electrician. Claimant was furloughed by the carrier in February 1962.

Effective January 1, 1963, one position for electrician became vacant due to Electrician E. J. Bousson retiring at the close of business December 31, 1962. On the same date carrier posted Bulletin No. 8 advertising the vacancy for bids. On January 8, 1963, carrier posted Bulletin No. 2 assigning Electrician J. A. McDaniel to the position, Electrician McDaniel holds a seniority date of June 29, 1945 as an electrician and is junior in seniority to the claimant.

Carrier failed to issue notice of recall to service to the claimant.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended is controlling.

customary manner. If, for some reason, the letter was not delivered although properly addressed and mailed, we have shown that claimant had actual knowledge that his services were needed on January 2, 1963. He admits he had actual knowledge on June 3, 1963 when he came to the office and complained to Mr. Wilson that he had not been notified. Claimant did not present a claim until December 2, 1963.

The carrier complied with the requirements of Rule 20. The carrier did not violate the rule as alleged. Although the claim must be dismissed by your board account not timely presented, the claim would have been denied on the merits in any event.

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 waived right of appearance at hearing thereon.

Claimant, F. D. Novel, a furloughed electrician, contends that Carrier failed to recall him on January 1, 1963 to services as an electrician, to a position which became vacant due to the retirement of Electrician, E. J. Bousson, at the close of business December 31, 1962. On the same date the Carrier advertised the vacancy for bids and on January 8, 1963, Carrier posted a bulletin assigning the position to an Electrician who was Junior in Seniority to the Claimant. Claimant asserts this was in violation of Rule 20 of the Agreement.

Carrier doesn't deny that Claimant was senior to the electrician assigned to the position. Carrier maintains that both Rules 20 and 13 are applicable to the situation herein presented and in compliance with the agreement it mailed Claimant a letter on December 31, 1962 which contained the following: "We feel sure you know that under provisions of Rule 20 of the Controlling Agreement you have fifteen (15) days to claim the position advertised, or failing to do so forfeit your standing on the Seniority Roster of Electricians"; that in response to this letter claimant failed to report for work or make any claim for the position within the fifteen days provided for in Rule 20, and consequently, his name was dropped from the seniority roster.

Claimant denies that he ever received such a letter.

A brief review as to what the facts are is disclosed by the record and were discussed on the property, as follows:

1. We have a declaration by the Carrier that a letter was addressed to Claimant's home, properly addressed and sent by United States Mail in the manner customarily used on the property, notifying him that a vacancy had occurred in the position due to the retirement of Electrician Bousson. Claimant denies that he ever received any such letter or any other notice of the vacancy.
2. There is a statement by the Local Chairman that he was informed of the vacancy created by Bousson's retirement on December 31, 1962, and that he in turn notified Claimant that there was a vacancy and the job would have to be filled.
3. In addition to the Local Chairman's statement, others are cited indicating

that Claimant had full knowledge of Bousson's retirement and that there would be a vacancy, that such information was conveyed to him on or before January 2, 1963.

4. The first complaint of any description was made by Claimant to Carrier on June 3, 1963, when he advised Carrier that he had not been notified to return to work which is an indication that he had some knowledge of the assignment of an electrician's position to a junior employe on or prior to that date.

5. On December 21, 1963, he filed a time claim against the Carrier, which was some eleven months after the alleged violation of the Agreement by the Carrier.

From the foregoing facts and circumstances which appear in the record and were discussed on the property this Board has the right to properly infer that Claimant did in fact receive the letter Carrier claims to have mailed him on December 31, 1962 or that on or about January 1, 1963, the Claimant had actual knowledge of the fact that Bousson had retired and that a vacancy in the position had occurred in spite of his denial of the same.

Having reached the conclusion that the claim is without merit, further determination as to whether the original presentation of the claim or the subsequent appeal to the highest designated personnel officer were timely within the meaning of the August 21, 1954 Agreement is unnecessary.

See Awards 3594 and 3627.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1966.