

Award No. 4839

Docket No. 4707

2-CRR-CM-'66

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
CLINCHFIELD RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

(a) That the Carrier violated the terms of the Current Agreement when it failed to identify and specify for the purpose of bidding, the positions advertised in the carmens' craft.

(b) That the Carrier be ordered to re-advertise all vacancies or positions which have been erroneously bulletined and to identify and describe on the bulletins the vacancy or new position to be filled.

EMPLOYES' STATEMENT OF FACTS:

(1) That the Carrier is currently issuing bulletins of vacancies or new positions in a manner which is in violation of our agreement. Bulletins are presently listing the scheduled hours, regular work days and wage rate of position but do not specify particular work or operations to be performed within the respective craft.

(2) That by failing to identify the work content of the advertised position the carrier is depriving the employees' of their effective seniority right to acquire the more desirable positions.

(3) This dispute has been handled with all carrier officers designated to handle grievances, including the highest designated officers, with the result that all of them have failed to adjust it.

(4) The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYES:

(1) At the present time the carrier has in the Erwin Car Shop approximately fifty (50) carmen engaged in rebuilding open top hoppers. The majority of these positions have been bulletined as "General Carmens' duties at heavy repair car shop and such other carmans' duties as may be assigned." This manner of bulletining jobs as "General Carmen's duties" does not permit the senior employe to exercise his rights in that he has the same bid-in assignment as the junior employe and is more or less at the mercy of the foreman in charge as to where he is going to work

position advertised and to properly identify it as well as to specify the duties. The bulletins show in every respect all the information an employe needs to determine its desirability to him.

The Carrier has, in all respects, fully complied with the agreement and we respectfully request this Board to so find and deny the claim.

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.

This claim arose at the Carrier's Heavy Repair Car Shop at Erwin, Tennessee. Previously the general practice in bulletining any position or small group of positions had been to state its definite primary nature and location, adding the catch-all clause "and such other carman's duties as may be assigned." But by a change of practice in about 1963 the bulletin was generalized so as to read: "General repairs to freight cars," or "General carmen's duties at heavy repair car shop," followed by the catch-all clause. With regard to vacancies the name of the preceding incumbent continued to be shown.

The nature of the controversy appears from the General Foreman's letter of May 14, 1963 to the General Chairman, in which he said:

"I am sure that you are aware of the fact that a number of the men on heavy repair took advantage of the fact that they were holding a

job which had been bulletined for the performance of specific duties and 'such other carman's duties as may be assigned.' The result was that it required too long to place men in position where the regularly assigned man was absent; do this according to seniority as the men insisted on; and at the same time get men on each job who could and would do a satisfactory job and be able to turn out a reasonable amount of work.

This situation has crippled our shop performance to a certain extent for some time in the past. There are a certain number of positions in the steel car shop—welding and fabricating work to mention two—which every man on the roll at that shop is not able to perform satisfactorily although they may be senior to some other men who are able to turn out an excellent job on such positions.

The present practice of advertising these jobs as 'General repairs to Freight cars' is almost a necessity if we are to get production and a quality of work which will satisfy our management. Actually, I am sure that in the end this will work to the advantage of the men as well as to the advantage of the company.

There are, of course a few jobs on heavy which will continue to be bulletined stating the specific duties to be performed. I have in mind the welding jobs which are regularly assigned, certain work in the fabricat-

ing shop, etc. In fairness to the Railroad Company and in the interest of production and work quality I regret that we must continue to bulletin most of the positions at the steel car shop as we are now doing."

The Carrier's position thus is that with the exception of relatively few positions, as in welding and certain fabricating operations, it must continue to bulletin most jobs as "general repairs to Freight cars," etc.

The Employee's position is that this violates the employee's seniority right under Rules 10 and 17 to be accorded his "preference in filling such job or vacancy that may be desirable to him;—that except to the extent afforded by the name of the last incumbent it does not give him sufficient information to determine what job or vacancy may be desirable to him; and that in fact it does not permit him to select any desirable phase of his work according to seniority, but permits foremen to assign junior members to work preferred by their seniors.

It seems apparent that the new practice infringes seniority rights in both respects complained of, and that the Carrier does not consider that even the stated name of the last occupant of the advertised position gives the successful bidder a preferential right to any definite phase of freight car repair work, such as dismantling, fitting up, rivet crew service, or cleaning and repairing of triple valves or of air brake pistons, as under former bulletins. In that connection we approve the following statement of this Division in Award No. 2148:

"When a position has been established by bulletin the company cannot unilaterally substantially change the duties thereof. However, this does not mean that by establishing a position and assigning certain duties thereto they become permanently affixed thereby. Carrier can reorganize its work whenever it finds necessity for doing so, and may change the duties of a position but, when it does so, it becomes a new job for the purpose of Rule 42 and must be bulletined as therein provided, otherwise seniority would have little value and employees, by reason thereof, would not have the choice of work to which their seniority entitles them. The foregoing would not apply if the changes were of a minor character and incident to the normal duties of the position."

Many awards of this Division have upheld the employees' right to sufficient bulletin information to identify the jobs or vacancies desirable to them. See Awards. No. 962, 1440, 1574, 2148, 2294 and 3888. In fact, the Carrier concedes that bulletins "should show sufficient information to enable the employee to identify the job and to determine whether or not the position is desirable to him." Obviously this must include more than such work descriptions as "general repairs to freight cars" or "general carman's duties at heavy repair car shop."

Some positions are necessarily more general than others; but to give full effect to seniority rights all bulletins should be as specific as reasonably practicable and as traditionally worded. At the same time, the Employees should conform to the Carrier's right to divert their services incidentally to other carman's duties when necessary or desirable for the efficient performance of work and utilization of their time. With such mutual appreciation and observance of each other's interests and needs, prior bulletining practices should be resumed.

This Board cannot direct the parties in their work; but we hold that the descriptions of bulletined positions should be as above stated to accord with the Agreement, and we remand the subject matter of this dispute to the duly authorized

representatives of the parties for adjustment not inconsistent with these Findings.

A W A R D

Claim 1 sustained to the extent indicated in the Findings.

Claim 2 disposed of in accordance with the last paragraph of the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the interpretation was rendered.

INTERPRETATION NO. 1 TO AWARD NO. 4839

DOCKET NO. 4707

Name of Organization:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

Name of Carrier:

THE CLINCHFIELD RAILROAD COMPANY

QUESTION FOR INTERPRETATION:

"Should the Carrier re-advertise all vacancies or positions which have been erroneously bulletined?"

The claim was as follows:

"(a) That the Carrier violated the terms of the Current Agreement when it failed to identify and specify, for the purpose of bidding, the positions advertised in the carmen's craft.

(b) That the Carrier be ordered to re-advertise all vacancies or positions which have been erroneously bulletined and to identify and describe on the bulletins the vacancy or new position to be filled."

In support of the claim the Employees submitted as Exhibits A-1 to A-7, inclusive, seven bulletins dated from October 7 to December 23, 1963, involving 13 carmen's positions, to show the new practice complained of, and as Exhibits B-1 to B-7, inclusive, seven bulletins dated from February 14 to October 31, 1957, involving 17 carmen's positions, to show the prior practice.

Of the seven "A" bulletins, in addition to the catch-all clause, three merely designated the duties as "general carman's duties at heavy repair shop;" but one of them added "(R. C. Edwards, Jr. vacancy)." The other four merely designated the duties as "general repairs to freight cars;" but only one of them failed to add the name of the last occupant of the position, or such designation as "relief yard crane operator" or "derrick ground crew", the latter showing also the name of the last occupant. Thus three of the seven "A" bulletins were limited to a general designation of duties without further job identifications. While these were submitted as typical bulletins, it was not stated that the two types of bulletins ran in those proportions. The same

is true of the twenty samples of 1963 and 1964 bulletins issued before the filing of this docket which were shown by the Carrier, all but four of which stated the names of the last occupants of the jobs to be filled.

All of the "B" exhibits shown by the Employees as evidence of the prior practice showed, in addition to the catch-all clause, a designation of the principal or primary duties of the position, such as "fit-up crew", "punch operator", "triple valve cleaner & repairer", "cleaning and servicing air brake pistons", "heating, bucking, sticking and driving rivets", "welding on cars and car parts", and "fitting up cars — reaming and riveting at fit up station". Four of the "B" bulletins named the last preceding holders of the positions. Thus all of them identified the jobs sufficiently. However, it was not contended that under the prior practice all bulletin job descriptions were so specific; in fact it was conceded that not all of them could be; but the numbers or proportions of bulletins properly or by practice containing only general job descriptions cannot be determined from the record. It shows that a proposal was made by the Employees that 5% of the jobs might be bulletined in general terms, subject to certain conditions; but as no agreement was reached in the matter it is impossible to determine which specific positions, or even what proportion of the positions, have been in the past or will be in the future properly bulletined in general rather than in specific terms. Consequently it would have been pointless to sustain the second part of the claim by ordering the Carrier to re-advertise all vacancies or positions which have been "erroneously bulletined;" for if the parties should be unable to agree as to that, and should request an interpretation of the term "erroneously bulletined", this Board could only point out, as above stated, that it could not determine from the record what proportion of the positions, or which specific ones, had been "erroneously bulletined".

It is possible that the parties can determine whether the positions included in the three bulletins shown as Exhibits A-1, A-2 and A-4, namely, Bulletins Nos. 98, 108 and 138, are positions which under the prior practice would have been more specifically described, and perhaps others may be agreed upon.

However even in those instances the proper remedy would not necessarily be the re-advertising of each position involved, to the detriment of present occupants, and perhaps some disruption of service. If in any instance one or more employees are found who would have bid upon a certain position had it been more specifically bulletined, the senior employee should be allowed to take it, provided a way can be worked out between the parties. But a re-bulletin would not necessarily bring that result; it would simply throw the position open for bids by all interested employees, and not merely the employees who would have bid for it originally. Furthermore, the present occupants of such positions are entitled to some consideration, since certainly errors in prior bulletins were not their fault; they might even be entitled to question the validity of bulletins to fill their positions, which are not new jobs or vacancies. (Rule 10).

For those reasons the second part of the claim was not sustained, but the subject matter was remanded to the property for such adjustment as the parties might give it.

It did not seem necessary to go into these details in Award 4839, which clearly did not direct the Carrier to re-bulletin positions. On the contrary,

after pointing out that the Carrier admitted having adopted a new policy of bulletining in general terms, and that some positions are necessarily described in more general terms than others, the Findings concluded as follows:

"This Board cannot direct the parties in their work; but we hold that the descriptions of bulletined positions should be as above stated to accord with the Agreement, and we remand the subject matter of this dispute to the duly authorized representatives of the parties for adjustment not inconsistent with these Findings."

The award as made requires a negative answer to the question submitted for interpretation.

Referee Howard A. Johnson, who sat with the Division as a Member when Award No. 4839 was rendered, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1966.