

Award No. 5207

Docket No. 5014

2-IC-EW-'67

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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement at Paducah Shops when Electrician Harry Murphy, having an armature winding job bid-in, was used to fill a vacancy on another job, while another employe was placed on the armature winding job, receiving differential rate November 3rd through November 11th, 1964.

2. That accordingly, the Carrier be ordered to pay Electrician Harry Murphy an additional six cents (6¢) per hour for fifty-six (56) hours.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Co., hereinafter referred to as the Carrier, maintains at Paducah, Ky., extensive facilities for the maintenance and repair of its equipment, including an armature winding shop.

Electrician Harry Murphy, hereinafter referred to as the claimant, is regularly employed as an electrician in Carrier's Paducah Shop and is a qualified armature winder.

Claimant bid in and was assigned to a position of electric crane operator on October 26, 1964. On the same date, October 26th Carrier posted Bulletin No. 79 advertising a vacancy for an armature winder with the advice that the bulletin would expire on November 2, 1964. Electricians assigned to winding armatures used in motors of less than 150 h.p. capacity are paid 6 cents per hour above the minimum rate paid electrical workers at the point employed as per Rule 125 of the agreement.

Claimant was the senior qualified applicant for the position of armature winder advertised in Bulletin No. 75 which expired on November 2, 1964, but was not released from his Crane Operator's position and actually assigned to the position bid in until November 12, 1964.

was placed on the Relief Caller's position immediately after a new employe was hired and trained we cannot find that the Carrier delayed unreasonably in permitting the claimant to take over the awarded assignment."

The award is attached as Management's Exhibit B.

The award clearly establishes that, in the absence of a time limit provision, the company may delay the transfer of an employe a reasonable time. There are no awards that hold that the bulletined position must be blanked until the employe can be transferred. Award 5941 denied a claim for difference in earnings even though the bulletined position was being filled during the interim by a junior man. The company, in this instance, had a valid reason for delaying the claimant's transfer. There were no extra or furloughed employes available to fill the assignment the claimant was vacating while it was on bulletin. It was reasonable, therefore, for the company to hold the claimant, who was a qualified crane operator, on his old assignment until it could fill the vacancy by bulletin.

IV. SUMMARY AND CONCLUSION

The union has failed to meet its burden of proof. It has not established a basis for a sustaining award. It claims to agree with the company on the controlling principle, but, without proof to support it, raises an argument that if believed, would destroy the principle's meaning.

Management has shown that the awards agree that a company has a right to delay transferring an employe to his bulletined job a reasonable time. None of the awards have said the bulletined position must be blanked pending the transfer. One award (3-5941) specifically ruled in favor of management even though the union protested that a **junior** employe filled the position temporarily pending the transfer.

There was good reason to delay the transfer a few days in this case. There were no extra or furloughed employes available to fill the position the claimant relinquished. The company merely delayed the transfer long enough to bulletin and fill the new vacancy.

All data is known to the union and is made a part of this dispute.

The management waives oral hearing but reserves the right to answer the union's submission.

The claim should be denied.

(Exhibits not reproduced.)

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.

The claim is that the Carrier violated the Agreement when the Claimant, who had bid in an armature winding position, was used to fill a vacancy on another job, while another employe worked his armature winding job and received the six cents per hour differential.

Claimant had held an armature winding job for some time, but in October, 1964 bid in a crane operator's position under bulletin, and was awarded it. The Carrier then immediately bulletined his old job and he bid it in again, allegedly because he did not consider the crane safe. On November 2, 1964, Claimant was awarded his former job, but was held on the crane position until it was bulletined and filled; consequently he was not transferred to his former position until November 12th.

Claim 2 is that Claimant be paid the differential from November 3, the day after he was awarded the armature winding job, through November 11, 1964, the day before he was finally transferred to it, or seven working days.

The employes' position is that the Carrier violated Rules 17 and 19, which provide as follows:

"Rule 17. When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

Rule 19. When new jobs are created or vacancies occur in the craft, the oldest employe in point of service will be given preference for assignment thereto. All new jobs or vacancies in the craft will be bulletined for five days before being filled permanently, except that jobs or vacancies of less than thirty (30) days' duration, need not be bulletined. Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman."

Rule 17 was not violated. The statement in the claim that Claimant "was used to fill a vacancy on another job" is not correct. He was retained on his own job until it could be filled on bulletin. Webster's New International Dictionary defines a "vacancy" as "A place or post unfilled; an unoccupied office or position; as, a vacancy in the senate, in a business house, etc." An election of a senator to another office, for instance, president or vice president, does not make his office vacant while he continues to hold it; it becomes vacant only when he leaves it. Until then he is a senator and entitled to his pay as such. Not yet having become president or vice president, though elected to that office, he is not yet entitled to the pay of his new office, and his old office is not yet vacant unless he vacates it in advance. Claimant was similarly situated; not having left his prior assignment, it was not yet vacant, and the pay to which he was entitled was the pay of that position. Therefore he was not an armature winding employe temporarily filling the position of a crane operator, and he was not entitled to the armature winder's pay differential.

Whether Claimant should have been transferred to his armature winding job the day after it was awarded to him on his bid, so as to be entitled to its differential, depends upon Rule 19.

Unfortunately Rule 19 does not mention the point and leaves it entirely to inference. Some agreements specify the time within which the employee shall be transferred to the bid-in position; some provide that he shall be transferred promptly; but Rule 19 provides only that "the oldest employee in point of service will be given preference for assignment" to new jobs or vacancies, and that (except for those of less than 30 days' duration) such positions shall be bulletined for 5 days before being filled.

Such seniority rights would be practically meaningless if a successful bidder must wait indefinitely before being transferred to the position to which he is assigned on bid. Consequently, the inference is that unless it is otherwise provided by the Agreement he must be transferred to it within a reasonable time, according to the circumstances of the particular case.

As was stated in Third Division Award 2174:

"We think **assignment** to a position, in contemplation of Rule 10, does not carry with it the right to **immediate transfer** to it. However, this does not leave the time of **transfer** to the caprice of the carrier. The transfer must be made within a reasonable time. What is a reasonable time must be determined from the facts and circumstances of the particular case."

The position taken by the Employees on the property is not clear. The claim is that Claimant should have occupied his new position the day after his assignment to it; but in the General Chairman's letter appealing the initial denial of the claim he said:

"It is not our contention that an employee must be placed on a bid-in job immediately after it is awarded to him. However, it is our belief that the intent of Rule No. 19 does not give the Carrier the privilege of holding an employee off of his bid-in job, while using a younger employee to fill said job. To do so, definitely deprives an employee of his seniority rights."

This can only mean that the successful bidder's seniority rights under Rule 19 are violated unless the job is blanked or is being filled temporarily by an employee senior to the bidder.

In his letter on final appeal he said:

"* * * We were not taking exception to the number of days before Mr. Murphy was placed on his bid-in job.

Your letter leads me to believe that your interpretation of Rule No. 19 obligates the Carrier only to bulletin a job for five (5) work days and place the successful applicant on the bid-in job within a reasonable time. I believe you have missed part of the intent of this Rule, which is, 'the oldest employee in point of service will be given preference for assignment thereto.' If the Carrier had blanked the

job mentioned for the seven (7) days that Mr. Murphy was held off of his job, we would not have taken exception. However, due to the fact that another man was placed on this job, a man who did not have the job bid-in, there was a violation of the Rules."

In this paragraph he seems to have abandoned the question whether the temporary occupant of the position was junior to the bidder, and to have taken the position that there was a violation if the job was filled at all. In the second sentence quoted above he seems to disagree with the reasonable time rule.

However, the reasonable time rule is too logical and too generally recognized for rejection. See Awards 2894 and 4451 of this Division; Awards 2174, 5941 and 13319 of the Third Division; and Award 18, Special Board of Adjustment 452. It is the only one which can reasonably be read into Rule 19 by inference. The question then, is whether nine days, of which seven were working days, involved an unreasonable delay before Claimant's transfer to his bid-in job, and if so, what lesser period, if any, would have been reasonable. The claim for the pay differential as of the day immediately following Claimant's assignment necessarily argues that even one day's delay was unreasonable, although, as noted above, the General Chairman expressly disclaimed that argument.

In the Employee's submission they say on this point:

"No excuse existed for holding Claimant on the Crane Operator's position and assigning Electrician Pitt to the armature winding job for the reason that Pitt is qualified to operate the crane, therefore, Claimant could have been assigned to the position bid in and Pitt used to fill the Crane Operator's position while same was under bulletin, without interruption to Carrier's service."

This seems to offer an inference that any delay at all is unreasonable if two employees can merely exchange the two jobs. But this argument was apparently not made on the property, the only recorded references to Pitt then being that he was "a younger employee" (Exhibit A-1), and that he "had a general diesel job" as his regular bid-in position. (Exhibits A-2 and A-4.)

Delays found reasonable in the Awards cited above under the facts of those respective claims were as follows: Award No. 2894, 6 days; Award No. 4451 (where the Rule provided that the successful bidder be transferred promptly), 3 days; Third Division Award No. 2174, 83 days; Third Division Award No. 13319, 3 days; Award No. 18, S. B. A. 452 (where the Rule provided that the bidder be transferred promptly), 15 days. In Third Division Award No. 5941, under the facts of that case, a 6 day delay was held reasonable, but a further 8 or 9 days' delay was held unreasonable.

The Carrier's position on the property was that: "Since he (the Claimant) was on the crane operating job that had to be filled we did not place him back on the armature winding job until we could fill the crane operator's job. This has been a practice of long standing." (Exhibit A-5.) Neither of these statements was denied by the General Chairman, and the practice seems not unreasonable, in the interest of conducting operations without unnecessary or multiple transfers.

Here the delay amounted to 9 days of which 7 were work days. As noted above, it was stated and not denied that the practice on Carrier's lines had been to retain a successful bidder on his old job until it has been bulletined and assigned, which seems not unreasonable. On the other hand, in view of the Claimant's seniority rights to the bid-in position, the delay in his transfer must be considered unreasonable unless there has been bona fide action to make the delay as short as reasonably possible. That the transfer should be made within a reasonable time as so measured is the only inference which can reasonably and fairly be read into Rule 19.

Here the delay amounted to nine days. The Carrier's explanation for the delay was its reasonable practice of first filling the successful bidder's position, which required a five day bulletin. The authorization and preparation of a bulletin are not instantaneous, nor is an order for the transfer of the successful bidder upon the award of his old position to his successor. But at the expiration of the first five day bulletin it was known that Claimant was the successful bidder, and therefore that it was necessary to bulletin the job he then occupied. Had it then been Friday there might reasonably have been a delay until Monday before the issuance of the necessary bulletin. But November 2, 1964 was Monday, and it should have been reasonably possible to post the bulletin on Tuesday so that the five day period for the ascertainment of Claimant's replacement would expire on Sunday, November 8. That would have permitted arrangements on Monday, the 9th, for the exchange of positions by the two successful bidders on the following day, Tuesday, November 10. Since Claimant's transfer was not until November 12, the extra two days delay must be held unreasonable, and the claim for the differential must be sustained for November 10 and 11.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1967.