

Award No. 5208

Docket No. 5060

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 the Paducah Shops when Electrician J. W. Ward was awarded the armature winding job but another Electrician was placed on this job receiving the six cents (6¢) differential pay while J. W. Ward was denied the differential rate of pay October 6th through October 15, 1964.

2. That accordingly, the Carrier be ordered to compensate Electrician J. W. Ward for sixty-four (64) hours at six cents (6¢) per hour.

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

On September 29, 1964 Carrier posted Bulletin No. 76 advertising a vacancy for an armature winder with the advice that the bulletin would expire on October 5, 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. 76 which expired on October 5, 1964, but was not released from his Electrician's position in the Diesel Shop, and actually assigned to the position bid in until October 16, 1964.

a junior man. The company, in this instance, had a valid reason for delaying the claimant's transfer. There were no extra or furloughed employees 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 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. There is nothing in the agreement or the awards that requires management to blank an assignment until the assigned employee can be transferred.

Management has shown that the awards agree that a company has a right to delay transferring an employee 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 employee 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 employees 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 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.

This claim is essentially the same as that in Award No. 5207, and involves Rules 17 and 19 of the Agreement. What has been said in that award as to both rules is applicable here.

Claimant was the successful bidder for an armature winding position under a five-day bulletin posted on Tuesday, September 29, 1964, and expiring on Sunday, October 4.

The Carrier states as follows in its submission:

"J. W. Ward, the Claimant, was the successful applicant and was awarded the position on October 8, 1964. However, the Company did not transfer Mr. Ward to the new position until October 16, 1964. It delayed until it could advertise and fill the position Mr. Ward vacated."

The Carrier's position is that under rules such as those here involved, which do not prescribe the time for transfer after assignment to a bid-in position, its reasonably prompt action under that practice was not contrary to the agreement, citing Third Division Award No. 2174, which held as follows:

"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."

This means, of course, bona fide action to make the transfer as soon as reasonably possible. The position involved was a new one. There is a dispute between the parties whether, during the period between Claimant's assignment and his transfer to the position, another armature winding employe was filling that or a similar position, the occupant of which was on sick leave; but it is not material whether during that period the job was blanked, or whether it was filled, or by whom. The only question is whether the Claimant's transfer was within a reasonable time. See Awards 2894 and 4451 of this Division, Awards 2174, 5941 and 13319 of the Third Division, and Award 18 of Special Board of Adjustment 452, all of which state what we consider the correct principle under Rule 19 of this Agreement and similar provisions. In view of the successful bidder's seniority rights a delay is reasonable if there has been bona fide action to make it as short as reasonably possible.

As noted above, the Carrier alleges that the position was awarded to Claimant on October 8th, but the bulletin period expired on Sunday, October 4th, whereupon it became apparent that the Claimant was the successful bidder and that his old job would have to be filled. On the following Monday or Tuesday, October 5 or 6, it should have been reasonably possible to bulletin the position from which Claimant was to transfer. The bulletin period would then have ended on Saturday or Sunday, October 10 or 11, which would have allowed ample time for management to arrange on Monday, October 12, for Claimant's transfer to his new position on October 13. Consequently the further delay until October 16 was not reasonable, and the claim for the differential should be sustained as to October 13, 14 and 15.

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.

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