Award No. 5410
Docket No. 5168
2-SOU-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. "That the Southern Railway Co. violated the current agreement between the Electrical Workers, as represented by the International Brotherhood of Electrical Workers, and the Carrier, when the Carrier hired two men, namely, C. T. Catchings and W. H. Wilkins and placed them on electricians' job at Pegram Shop, Atlanta, Georgia, for which they were not qualified.

2. That the Carrier be compelled to remove the aforenamed men from the electricians' jobs that they are currently attempting to work and replace them with qualified electricians."

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Company hereinafter referred to as Carrier, employed C. T. Catchings and W. H. Wilkins at Pegram Shop, Atlanta, Georgia, and placed these men on electrician's jobs. These men were also placed on the Electrician's Seniority Roster at Atlanta, Georgia, as evidenced by copy of Sheet 2 of the 1966 Electricians' Seniority Roster attached as Exhibit A.

The two referred to men have not served an apprenticeship or had the requisite four years practical experience in any phase of electrical work as called for in Rules 45 and 135 of the current agreement between the Carrier and Employes as represented by the International Brotherhood of Electrical Workers.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, all of whom have declined to make satisfactory adjustment.

The agreement effective March 1, 1926, as subsequently amended is controlling;

versely affected by any decision of the Board would be given notice of the claim and would be afforded the opportunity of appearing before the Board. Carrier understands this resolution is still in effect. Whether it is or not, Carrier insists that C. T. Catchings and W. H. Wilkins, the two men involved in this demand made by the Brotherhood, be given written notice by the Executive Secretary of the Board of the claim which the Brotherhood here attempts to assert and be afforded the privilege of appearing before the Board with the Referee present in order that they may protect their interests in the matter.

CONCLUSION

Carrier has shown that:

(a) The Board does **not** have jurisdiction over the here involved dispute as it involves matters **not** subject to the collective bargaining requirements of the Railway Labor Act.

(b) The Board's authority being limited to interpreting the contract, it has no authority to compel the Carrier to do anything. For this reason the Board has no jurisdiction over Part 2 of the claim submitted to the Board by the Brotherhood.

(c) The current agreement between Carrier and its "employes" of the electrical workers' class or craft has **not** been violated as alleged by the Brotherhood.

(d) The point here at issue has long since been conceded by the International Brotherhood of Electrical workers.

(e) C. T. Catchings and W. H. Wilkins should be notified in writing by the Board of the Brotherhood's demand that they be dismissed and afforded the privilege of appearing before the Board to protect their interests.

The Board not having jurisdiction over the claim submitted to the Board by the IBofEW as a dispute is left with no alternative but to dismiss it for want of jurisdiction.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the electrical workers' submission reserves the right after doing so to make response thereto and submit any other evidence necessary for the protection of its interest.

Oral hearing is requested.

In event the Board reaches a deadlock and a referee is selected or appointed, Carrier desires to appear before the Board with the referee present.

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 of 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.

First it is necessary to deal with the Carrier's challenge to the jurisdiction of the Board to hear and determine this case on the merits. The basis of that challenge is that the claim, as worded, involves matters not subject to collective bargaining within the meaning and intent of the Railway Labor Act, as amended, in that the National Railroad Adjustment Board has no jurisdiction or control over the Carrier's hiring policy nor the authority to compel the Carrier to hire or fire any of its employes. Award Nos. 5146 and 5147 of this Division are cited as controlling.

The decisional grounds for dismissing the claims in Awards 5146 and 5147 were (a) that the men hired were not identified, and (b) all parties involved were not given notice; that, accordingly, there was a failure to comply with the notice requirements of the Railway Labor Act and the rules of procedure promulgated by the N.R.A.B. and its several Divisions. No such failure of compliance with these procedural requirements is shown here. We find, therefore, that Awards 5146 and 5147 are neither applicable nor controlling in this case.

Part 1 of the claim alleges a violation of the agreement. The record establishes that the Employes on the property filed timely objection to the hiring and placement of the men involved and maintained throughout the progress of the claim that such action by the Carrier constituted a violation of specified rules of the agreement. Thus there can be no doubt that a dispute between the parties involving the interpretation and application of the agreement existed. Under the Railway Labor Act, this Board has jurisdiction of such disputes. Accordingly, we will take jurisdiction of Part 1 of the claim.

Part 2 of the claim demands, as a remedy, the removal of the named individuals from their jobs as electricians and their replacement with qualified electricians. We agree with the Carrier's contention that under the Railway Labor Act and the agreement in evidence here, the Board is without authority to compel the Carrier to dismiss any of its employes and to hire other as replacements. The agreement itself expressly bars the dismissal of any employe with thirty days or more of service without first being given an investigation (Rule 36). The Act contains no language which expressly or implicity confers upon the Board the power to compel a Carrier to hire or fire anyone. We find, therefore, that this Board has no jurisdiction of Part 2 of the claim. It will, accordingly, be dismissed, and our decision will be restricted to a consideration of the merits of paragraph 1 of the claim.

It appears that this dispute arose when in 1964 the Carrier employed Messrs. Catchings and Wilkins, placed them in a training program for electrical workers conducted by Southern Technical Institute, and, after they had completed the training course, assigned them to jobs as electricians at Pegram Shop, Atlanta, Georgia. Wilkins resigned on November 5, 1966.

The Employes assert that under the foregoing facts, the Carrier violated the agreement because the named individuals were not qualified in accordance with the requirements of the agreement. They cite as controlling, the following rules:

Rule 31, reading in pertinent part:

"None but mechanics or apprentices regularly employed as such will be assigned to do mechanics' work as per special rules of each craft, except at small points where minor or emergency jobs are required.

Rule 45. Applicants for Employment

Applicants for employment may be required to take physical examination at the expense of the carrier to determine the fitness of the applicant to reasonably perform the service required. They will also be required to make a statement showing address of relatives, necessary four years' experience and name and local address of last employer.

Rule 135. Qualifications:

Any man who has served an apprenticeship or who has had four years' practical experience in electrical work and is competent to execute the same to a successful conclusion within a reasonable time will be rated as an electrical worker.

An electrician will not necessarily be an armature winder."

The Carrier denies the allegation that its contract with the Electrical Workers has been violated. It argues that Rule 45 of the Shop Crafts' Agreement (quoted above) merely requires the applicant to pass a physical examination and to provide a means of checking his record before approving his application. It characterizes as "silly" the Brotherhood's interpretation of Rule 45 that all applicants for employment as apprentices, helpers, lineman, groundman, or other occupation must show four years' experience in the performance of electrician work. Moreover, the Carrier contends that under Rule 135 the phrase "rated as an electrical worker" means only to be paid as an "electrical worker", not as an "electrician"; that there are numerous occupations in the electrical workers' class or craft other than electricians and that each is rated as an electrical worker in accordance with Rule 135. Thus, the Carrier concludes, the qualifying language of the rule cannot be said to apply to journeyman mechanics only.

It is a cardinal rule of contract interpretation that words are to be given their usual and ordinary meaning. Rule 45 of the Shop Crafts' Agreement requires all applicants for employment to make a statement showing "* * * necessary four years' experience * * *". Giving those words their ordinary meaning, the only reasonable interpretation is that an applicant must have had four years' experience in the class or craft in which he seeks employment. Otherwise there would be no valid reason for including that qualification among the other requirements of the rule. The Carrier's point that the four-year requirement could not, as a practical matter, be applied to an applicant for employment as a trainee or apprentice is well taken, but other provisions of the agreement relating to apprenticeship training and the assignment and use of apprentices make clear the distinction between the latter and those applying for craft employment as journeymen.

Rule 135 is one of several special rules applying to electrical workers only. It sets the qualifications required of a man seeking the rating of "elec-

trical worker", which term includes, among others, the classification of electrician. There is nothing esoteric or ambiguous about the language of the rule. It clearly requires service of an apprenticeship **or** four years' practical experience in electrical work **and** a showing of competence in order to be rated as an electrical worker. Having met those qualifications, the applicant then becomes eligible for employment as a journeyman in one of the classifications of electrical work spelled out in the special work classification rules of the agreement. We can find no reasonable basis for the Carrier's narrow interpretation of the word "rated" to mean "paid", and nothing more. Read within the context of all the language of Rule 135, the Board finds that the phrase "rated as an electrical worker" means employed **and** paid at the appropriate rate for work performed under one of the aforesaid classification rules.

Rule 31 of the Shop Crafts' Agreement reads, in pertinent part as follows:

> "None but mechanics or apprentices regularly employed as such will be assigned to do mechanics' work as per special rules of each craft, except at small points where minor or emergency jobs are required."

Here the fact that Messrs. Wilkins and Catchings when first employed by the Carrier as "trainees" had not either served an apprenticeship or had had four years' practical experience in electrical work is not in dispute. Accordingly, the Board finds in the light of its interpretation of the contractual rules in evidence that this constituted a violation of Rules 31, 45 and 135 of the Agreement. Part 1 of the claim will, therefore, be sustained; Part 2 will be dismissed.

AWARD

Claim disposed of in accordance with Findings.

By Order of SECOND DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.

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