



Award No. 5749

Docket No. 5499

2-AT&SF-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(CARMEN)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY (WESTERN LINES)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier deprived Carman J. C. Ferguson of his contractual rights to afford him the position which he bid on and was assigned by Bulletin No. 20 dated July 19, 1963 at Silsbee, Texas.
2. That accordingly the Carrier be ordered to place Carman J. C. Ferguson on his position and additionally compensate him eight (8) hours each work day, consisting of Monday through Friday, beginning July 24, 1963 and to continue in like amount until correction has been made.

EMPLOYEES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, (formerly the Gulf, Colorado and Santa Fe Railway Company), hereinafter referred to as the Carrier, employs carmen at Silsbee, Texas, on the repair tracks and in the trainyards. Carman J. C. Ferguson, hereinafter referred to as the Claimant, was employed as a car inspector in the trainyards, working hours of 12 midnight to 8 A.M., work week of Monday through Friday, rest days of Saturday and Sunday.

On July 19, 1963 Bulletin No. 20 was posted advertising a regular position formerly held by Carman R. N. Ebarb, which is the Employees' Exhibit "A."

On July 23, 1963 the Claimant bid on Bulletin No. 20, which is the Employees' Exhibit "B."

As a result of Bulletin No. 20 being posted and the Claimant being the senior bidder, then Bulletin No. 20 was posted assigning Car Inspector J. C. Ferguson to the position, which is Employees' Exhibit "C."

After the Claimant had been assigned by Bulletin No. 20, which was Carman R. N. Ebarb's old job, as shows in the original Bulletin No. 20,

practice over the years not only at Silsbee but elsewhere on this property. (2) That Claimant Ferguson has been paid eight (8) hours on each day that he performed service for eight hours beginning July 24, 1963, and that no claim for additional compensation for Claimant Ferguson was handled on the property by the Petitioner, and (3) That the instant dispute is entirely without merit or support under the rules of the governing Shop Crafts Agreement and should be denied for the reasons set forth herein.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and, accordingly, reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Employees' ex parte submission in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(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 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 were given due notice of hearing thereon.

Carrier is required by Rule 16 and the language found in MEMO No. 1: (b) to bulletin vacancies and new positions. The bulletin must state requirements of a new position. The same thing is accomplished for filling permanent vacancies if the bulletin states the name of the individual vacating the position. Carrier complied with all bulletin requirements.

Claimant was the successful applicant. He was notified, assigned, and worked from July 24, 1963 to May 15, 1964, according to the bulletined hours, days, and rate of pay, but contends, nevertheless, that he was not assigned to "R. N. Ebard's old job" as advertised, because the "write-up work," which served as inducement for his written application, was removed from "Ebard's old job" and was assigned to another employee of the same class and craft to be performed during the same hours, on the same days, and at the same location as worked by Claimant.

There is no position at Silsbee, Texas, classified as a "write-up" position, nor is the "write-up" work bulletined and assigned in combination with other duties on jobs at Silsbee, which is reason to say that the "requirements" of "R. N. Ebard's old job" did not necessarily include "write-up."

Moreover, the only reference to "work" requirements mentioned in MEMO No. 1: (b) has specific reference to applications filed by "employees on the same shift" based upon an "understanding that will be had between the local supervision and the committee as to the positions or work that is to be considered comparable." We see no relationship to this

dispute and will not undertake, therefore, to impose "requirements" upon Rule 16 that depend upon understandings first "had between the local supervision and committee," that are in evidence at and for other points but not at Silsbee.

We find no clear basis in evidence for sustaining the claims.

A W A R D

Claim (1) denied;

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.