Award No. 6034
Docket No. 5889
2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 16, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Norfolk and Western Railway Company violated the Current Agreement when they arbitrarily abolished the position of Car Repairer (relieving the Derrick Car Man) that was established per Rule No. 17 and Notice No. 635 dated August 11, 1961, when the work of the position abolished remains to be performed, by other employes.

2. That the Norfolk and Western Railway Company, be ordered to comply with Rule No. 17 of the Current Agreement and bulletin the duties of (relieving the Derrick Car Man to the Carmen) established by Notice No. 635 August 11, 1961.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company hereinafter referred to as the carrier maintains a shop, with facilities for the inspecting and repairs to freight cars, also, a derrick car and crew for wrecks and derailments within the jurisdiction of Williamson, West Virginia.

This derrick car formerly operated under steam power and required a fireman after the conversion of said derrick car to diesel power, it rendered the fireman unecessary except for the purpose of oiling parts and aligning cabs, the firemen helpers position was abolished per Rule No. 52 and a new job created per Rule No. 17, Notice 635 was posted providing for one (1) car repairer relieving the derrick car man. Said job was assigned per Notice No. 635-A dated August 14, 1961 to Car Repairer W. M. Altice, who was later killed during a wrecking operation on March 30, 1966, and his vacancy was bulletined to the car repairers on April 11, 1966 by Notice No. 869 said vacancy was awarded to Car Repairer B. J. Crawford by Notice No. 869-A dated April 18, 1866.

On December 15, 1967 Mr. Crawford was appointed derrick engineer and on January 15, 1968 carrier posted Notice abolishing the position and duties

gotiations. In discussing these proposed rules, the following conversation took place between these representatives as recorded on Pages 516 and 517 of the transcript of these negotiations:

"Mr. Baldock:

* * * * *

As between the two rules, the one that you have read into the record as the present rule and the proposed rule, the only significant difference is that the wrecking crew shall be composed of carmen rather than the situation that you now have of some carmen and some laborers. This is the big point of the rule, and that is all we are talking about.

Mr. Hark: Also the rule gives management the right to appoint as derrick car engineer the man whom they think is most qualified, don't you think?

Mr. Baldock: Yes, that is correct* * *."

The rule subsequently adopted is the present Rule 118 which retains "not including Engineers" and leaves to the carrier the right to select this employe from any source it chooses.

Carrier has definitely revealed these facts:

1. It is unaware of any local agreement concerning this issue and if there were, it, being in conflict with a rule of the basic agreement, would be valueless.

2. The wording of a bulletin does not invalidate a rule of the agreement.

3. There is no provision in Rule 17 for the establishment of any position nor which outlines the wording of a bulletin once a position has been established.

4. Rule 18 is clearly and unambiguously written. The language of Notices Nos. 635 and 869 definitely violate this rule.

5. Claim should be denied for failure of petitioner to meet the burden of proof of establishing the validity of the claim that Carrier violated Rule 17 by its action of establishing a new position as shown by Bulletin No. 945.

Under the above-related circumstances, the request of the employes that a position be bulletined to include the language "relieving the Derrick Car Man" is not supported by any rule or agreement on the property, is without merit and should be denied.

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 Carrier in this case is charged with a violation of the Agreement for abolishing the position of Car Repairer (relieving the Derrick Car Man) which was, according to the Organization, established per Rule No. 17 and Notice No. 635 dated August 11, 1961 at a time when the work of the position remains to be performed by other employes.

A demand is made to this Board by the Organization requesting that we order the Carrier to comply with Rule No. 17 of the Current Agreement and bulletin the duties of (relieving the Derrick Car Man to the Carmen) established by Notice No. 635 August 11, 1961.

The facts in this case as developed from the record are that in 1961, allegedly as the results of a local Agreement between the Local Committee and General Foreman, a job was created and bulletined to the Carmen for a Carman to relieve the derrick car operator. This job remained in existence until January 1968 when it was brought to the attention of the Carrier. The appropriate Carrier official instructed the Local Supervisor to abolish the job on the grounds that it was violative of the Agreement. Rule 118 of the Agreement captioned — Wrecking Crews — reads in pertinent parts as follows:

> "Regularly assigned Wreck Car Crews, not including Engineers, will be composed of two Carmen and laborers. Where Firemen are necessary, carmen helpers will be used."

Since the derrick involved in this case is a diesel unit a fireman is not necessary. The job established without proper authority in 1961, provided a third Carman on the crew, which was in violation of the above cited rule. In this instance another job was bulletined for a Carman to work on the wrecking crew. The crew consist remained the same. The only change was in the wording of the bulletin. The original bulletin, even though in existence for 6 or 7 years was invalid. Carrier in effect re-bulletined a position that had been erroneously bulletined.

As we view this case, the Organization principally is charging Carrier with a violation of Rule 17 which is the standard "Bulletin" Rule. We are unable to follow the Organization's rationale in this case. Carrier has every right to abolish the unauthorized position because it was in violation of the National Agreement between the parties. It also had every right to re-bulletin the job as was done, and they were in complete compliance with Rule 17. This Rule does not establish positions. It merely advertises them once they have been established by proper authority. Furthermore we have no authority to force Carrier to bulletin a position as the Organization requests. We take note of this fact that there is no money claim involved, nor is there an identifiable claimant. The Claimant itself is vague and ambiguous. In view of the foregoing, we will deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.

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