

Award No. 6160

Docket No. 5999

2-N&W-CM-'71

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, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Carrier violated the Agreement of September 1, 1949, between the Norfolk and Western Railway Company and the Employees represented by System Federation No. 16, through failure to bulletin a permanent vacancy in the Carmen's Craft, at the East End Shop, Roanoke, Virginia.

2. That Carrier be ordered to comply with Rule 17 of Current Agreement and bulletin the job formerly held by Car Repairer S. D. Carr, Jr., in such manner as to describe the duties thereof in an identifiable manner, so as to enable the employees to exercise their seniority in an intelligent manner in bidding on such permanent vacancy.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains a shop and facilities for the building and repairing of cars at Roanoke, Virginia, commonly referred to as the East End Shop. Prior to June 3, 1968, Car Repairer S. D. Carr, Jr. held a position in the side location, in the south bay of said shop with regularly assigned rest days. Such position was made vacant on June 3, 1968, due to said Mr. Carr being awarded and assigned to another position, as machine hand. The vacancy created by Mr. Carr's bidding to another assignment has and is being filled five (5) days per week; however, such vacancy has not been bulletined to the carmen employed in the East End Shop, as the job formerly held by Mr. Carr, or in a manner in which the duties of said vacancy could be identified, for the purpose of imparting information to employees desiring to make application for such vacancy.

However, a position was bulletined on date of July 22, 1968 and cancelled on July 29, 1968, allegedly due to no bids being received, such bulle-

new rule which clearly and definitely stated what was contended the present rule provided. If, as the organization originally contended, the present rule provided for specific information on the bulletin, then the proposals of the general chairman were meaningless and superfluous. Obviously, the requests for the rewritten rule are an admission that the present Rule 17 does not provide for those items contained in the requests.

In that the various Divisions of the Board have ruled that the act of both the carrier and the organization accepting a practice over a period of years as indicating the meaning and intent of a rule, which can be changed only through negotiations, carrier respectfully asks that this protest be declined.

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.

In July, 1968, a vacancy was created by Carman Carr bidding on and being awarded a job in the planing mill. Mr. Carr's vacancy was advertised on Notice No. 16, dated July 22, 1968. No bids were received on this notice and it was cancelled by notice dated July 29, 1968. The instant claim has been filed alleging that the bulletin was improper in that it did not specify the precise duties and work location of the job involved. The Organization requests that this Board order the Carrier to comply with Rule 17 of the Agreement describing the duties of the position in detail to enable the employes to properly exercise their seniority. Rule 17 in pertinent parts reads as follows:

"RULE 17. FILLING VACANCIES

When new jobs are created or vacancies occur in the respective crafts, the oldest employes in point of service shall * * * be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies, or new jobs created, will be bulletined."

The Organization contends that since Carrier did not issue a bulletin for 19 days after the vacancy occurred, and since the bulletin when issued contained no information which would identify the position as the vacancy created by Carr, Carrier stands in violation of Rule 17.

Carrier contends that they have been issuing bulletins advertising jobs in the same manner for approximately 50 years, said bulletins containing the date, work area (shop), class of work to be performed, hours of assignment and work days, and have been accepted as having been in compliance with the bulletin rule.

As we view the record, we find no language expressed or implied in Rule 17, the standard bulletin Rule, which places a burden on the Carrier to list precisely the duties of the position advertised. Indeed, we have examined sample bulletins contained in the record and agree with Carrier that they contain sufficient information to enable employees to exercise their seniority in an intelligent manner. Such were the facts in the instant case. Hence, we find that Carrier has complied with Rule 17. Furthermore, since there is neither an identifiable claimant nor a monetary claim involved, but simply a request that this Board order Carrier to comply with Rule 17 as interpreted by the Organization, we have no alternative other than to 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 16th day of July, 1971.