



Award No. 6161

Docket No. 6002

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 EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the Current Agreement, when they failed to bulletin the permanent vacancy resulting from the retirement of Car Repairer D. W. Shelbourne on May 31, 1968, in an identifiable manner, so employees could exercise their seniority in bidding on same.

2. That the Norfolk and Western Railway Company violated the Agreement when they failed to assign the junior man to New Job advertised in Notice No. 13, and continued to fill the vacancy of D. W. Shelbourne, subsequent thereto.

3. That the Norfolk and Western Railway Company be ordered to comply with Agreement and bulletin the vacancy of D. W. Shelbourne, as such, or in such manner as to enable employees to identify such vacancy and properly exercise their seniority in bidding on same.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains at Roanoke, Virginia, a point on its line, a shop, with facilities for the building and repairing of cars, commonly referred to as the east end shop. Prior to May 31, 1968, Carman D. W. Shelbourne held an assignment which became vacant due to his retirement from service with the Carrier, on May 31, 1968, the specific duties of such assignment were the threading, bending and cutting of pipe for train lines and A. B. Triple Valves at the North Bay Freight Car Shop.

Instead of bulletining such vacancy as required by Agreement, Carrier posted Notice No. 13, bulletining for "1 Carman, First Shift, Freight Car Shop, General Carman's work, Monday through Friday, 7:00 A.M. to 3:30 P.M.", with no information which could be construed to identify it with the job formerly held by said D. W. Shelbourne. Eight days later, on June 11, 1968, Carrier posted notice showing A. A. Oakes, a second shift man, as being assigned to Job No. 13, as Carman, with no description whatsoever of

AWARD 10934 (Referee Miller)

"This claim was not presented by or on behalf of any employee involved.

In effect, the petitioning organization is asking the Board to make a hypothetical ruling in regard to the proper interpretation of a contractual clause in the applicable agreement of the parties. The claim is adjudged barred."

AWARD 14409 (Referee Hall)

"This claim does not present to this Board the type of dispute cognizable by the Board. In the record Petitioner admits that no one was adversely affected by the consolidation of the Seniority Rosters. It is also stated that if anyone in the future is affected claims will be filed. The position of the Petitioner is purely conjectural.

We are faced with what is a premature dispute in the nature of a request for a declaratory judgment where no one has been injured. This Board does not decide hypothetical claims."

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.

All matters contained herein have been a topic of discussion, correspondence or have been available to both parties involved in this dispute.

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.

The contending parties, the issue presented for adjudication and the arguments propounded by opposing factions are identical to our Award 6160. Adhering to the principle of Stare Decisis, we, adopting the reasoning of that award, 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 16th day of July, 1971.

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