

Award No. 6190

Docket No. 6042

2-IT-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when it refused to place Carman David Hammerschmidt on Position 489 within seven (7) calendar days after the expiration of the bulletin dated to expire August 8, 1969.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Hammerschmidt as follows:

- (a) Four hours' additional time each day to complete time and one-half for working improper hours on August 18, 19, 20 and 21, 1969.
- (b) Eight hours' straight time for each day not permitted to work his proper bulletined hours on August 19, 20 and 21, 1969.

EMPLOYEES' STATEMENT OF FACTS: Carman D. Hammerschmidt, hereinafter referred to as the claimant, is regularly assigned as such at Madison, Illinois by the Illinois Terminal Railroad, hereinafter referred to as the carrier.

The claimant was regularly assigned to Position 501 which works Mondays on the Rip Track, 8:00 A.M. to 4:00 P.M., and Tuesday, Wednesday, Thursday and Friday in the Train Yard, 12:00 Midnight to 8:00 A.M.

On date of August 1, 1969 the carrier posted for bid a new position (489) to work on the Rip Track Tuesday through Saturday, 8:00 A.M. to 4:00 P.M. The bulletin expired on August 8, 1969. (Our letter of claim erroneously gave expiration date as August 10, 1969 and claim dates are for dates seven days subsequent to August 10th instead of August 8th.)

Referee Bailer in Award 12 of Public Law Board 31 noted:

“ * * * employe, R. L. Weese, for whom claim is made, was employed in compensated service of the Carrier on each of the dates involved in the claim and suffered no loss of earnings by virtue of Carrier's violative action. Under these circumstances, no more than nominal damages in the amount of one dollar per day are justified for each work day covered by the claim.”

The two foregoing awards are particularly appropriate in the instant dispute. As in the case covered by Award 3 of PLB 20, the rule in the instant dispute contains no penalty. It was just agreed to three years before the instant dispute and if the Union wanted a penalty in it such as they are now seeking they should have “made the requirement for such payment explicit” in the rule. They did not do so for one very simple reason. If they had suggested such a penalty in the rule, they would have never obtained Carrier's agreement to the rule change. So now they are asking the Board to write a penalty into the rule, and, of course, the Board has recognized that it has no power to write new rules, add to, or change rules agreed to by the parties.

In the instant dispute claimant worked each date of claim, suffering no loss of earnings. If the Board considers a violation of the rule by carrier, claimant would be entitled only to nominal damages at the most. Compare Award 12 of PLB 31, cited above.

Other Public Law Board Awards on this point are: PLB 34, Award 13, and PLB 22, Award 15.

Carrier requests the Board to dismiss or deny the instant claim for the foregoing reasons.

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.

Claimant Carman herein bases his claim upon the alleged violation by Carrier of Rule 18(a) and (b) of the Agreement, when Carrier failed to place him as the successful bidder on Position No. 501 within seven (7) days from the expiration date of the bulletin covering said position.

Rule 18(a) and (b) provide as follows:

“(a) When new jobs are created or vacancies occur in the respective crafts the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All va-

cancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.

(b) At the expiration of the bulletin, notice will be posted designating the successful bidder and the successful bidder shall assume the job and rate of pay within seven (7) calendar days."

The Organization's position is that Carrier violated said Rule 18 when it held claimant on a night shift until August 22, 1969 and utilized a new employe to work the position in issue from August 18th until said date; that Carrier's excuse of claiming that said new employe needed experience before going to the third shift to fill claimant's vacated position was not a proper reason to hold a successful bidder off of a position of his choice; that further there were two other Carmen on the 3rd shift to work with the new employe; that Carrier's claim that there is no penalty for said violation would make rules null and void.

Carrier's position is that this Board has no jurisdiction to decide the claim due to a variance between the claim handled on the property and the claim submitted to this Board, in that the Organization originally filed a claim with Carrier for claimant for an 8 hour day at time and one-half rate and in addition an 8 hour day at the straight time rate; whereas the Organization has filed a claim to this Board changing the claim to an 8 hour day at straight time rate plus "4 hours additional time each day to complete time and one-half" for the dates in question; that the Organization perfunctorily handled the claim without citing a specific rule violation initially and then after citing a specific rule violation offered nothing to Carrier to support such a violation; that Rule 18 does not provide as to when a bulletin expires, and there is no maximum time set out in said Rule 18 for bulletins to expire; that Rule 18 provides that a successful bidder be placed on the job within seven days from the date of the bulletin assigning him to the job; that the Organization must show that Carrier withheld claimant from the job he was assigned to by more than seven days; that there is no penalty attached to the rule should it be violated by Carrier.

The facts show that Carrier bulletined Position No. 489, a new position, on August 1, 1969, with the bids to close at Noon, August 8, 1969. On August 21, 1969, Carrier issued an Assignment Bulletin No. F-4663 setting forth that the position in question was bid in and assigned to claimant effective August 22, 1969.

First, in dealing with Carrier's contention that the claim should be dismissed for lack of jurisdiction due to variance between the claim as handled on the property and the claim as before this Board, we find that the variance (reduction in claim for hours of pay from 20 hours to 12 hours) does not constitute substantially a change in the claim so as to warrant dismissal of said claim.

As was said in Third Division Award No. 3256:

"The Carrier urges that the claim originally made is not the same claim that is now before this Board. It is a fact established by the

record that variances in the form of the claim occurred from time to time until the claim reached this Board. In this respect, it was not intended by the Railway Labor Act that its administration should become super-technical, and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. The subject matter of the claim — the claimed violation of the Agreement — has been the same throughout the handling. The fact that the reparations asked for because of the alleged violation may have been amended from time to time does not result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it. No prejudice to the Carrier appears to have resulted in the present case, and the claim of variance is without merit.”

Therefore, Carrier’s contention of variance is without merit, and must be denied.

Concerning the merits, we are confronted with the issue as to whether “at the expiration of the bulletin” in Rule 18(b) of the Agreement should be construed as meaning the moment the bulletin time has expired or otherwise. The bulletin in question expired at 12:00 o’clock Noon on August 8, 1969. Was Carrier required to immediately post the name of the successful bidder at that time? We do not think so. However, we do construe “at the expiration of the bulletin” to mean within a reasonable time thereafter. We find that August 21, 1969 was not a reasonable time within which Carrier should have posted the name of the successful bidder, and, therefore, Carrier violated the Agreement in this instance.

However, in regard to damages, we find that Claimant failed to prove that he suffered any pecuniary loss and, therefore, is not entitled to his claim for compensation as asked for in the claim.

AWARD

Item 1 of the Statement of Claim is sustained.

Item 2 of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.