

Award No. 6217

Docket No. 6022

2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick 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 the Norfolk and Western Railway Company violated the Current Agreement, when on October 28, 1968, they failed to bulletin four jobs to the Carmen, in an identifiable manner, so as to enable the employes to properly exercise their seniority, in selecting the type of work preferred.

2. That the Norfolk and Western Railway Company be ordered to comply with the Agreement, and that all vacancies or positions which have been erroneously bulletined be readvertised, and that any future vacancies or new jobs be bulletined in an identifiable manner so as to enable the employes to properly exercise their seniority in selecting the type of work preferred.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains at Norfolk, Virginia, a point on its line, a Shop and Yards, with complement of employes for the performance of inspection, servicing and repair work, commonly referred to as Lamberts Point Yard and 38th Street Shop.

On October 28, 1968, carrier posted Bulletin No. LPC-8, advertising four (4) jobs to the carmen, hereinafter referred to as Claimants, for bids, with such descriptive information as shown below being given by said bulletin:

Job No. 1 - L.P.Y.D. 7A-3P, MO-FR, relief days Sat. and Sun.

Job No. 2 - 38St. Shop 7A-3:30P SU-TH, relief days FR and SA

Job No. 3 - 38St. Shop 3:30P-12:01A MO-FR, relief days SA and SU

Job No. 4 - Suffolk 11A-8P Tuesday through Friday and 9A-6P
Saturday (one hour meal period), relief days SU and MO.

part of the rule, and cannot be changed unless and until the rule is changed through negotiations.

4. The Board is not empowered to grant the relief requested.

Under these circumstances, the request of the employees is without merit, and carrier respectfully asks that it be denied.

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.

There is serious doubt that this Board has authority to direct a party to a collective bargaining Agreement to comply with its alleged contractual obligations. We do not have such equitable powers. We may decide whether one party has violated a particular rule in the agreement, and we may assess compensatory and, in some cases, even punitive damages, but it is doubtful if we may enter a judgment in the nature of injunctive relief.

Nonetheless, the precise issue between the same parties has been before this Board for adjudication. In Award No. 6091 we held that there is no requirement in Rule 17 "to specify either what the preponderance of the job duties will be, or in what particular work area they will be performed." Reference to applicable job titles is all that is required to describe vacancies and newly created jobs. A similar finding is in Award No. 6092.

Award No. 6160, affirming this principle, said:

"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."

This was followed in Awards 6161 and 6162.

Dismissing Rule 17, this Board in Award 6034 said that "we have no authority to force Carrier to bulletin a position as the Organization requests." Among other things, the claim was denied because no money claim was involved, and there was no identifiable claimant.

Finally, Award No. 6176 reviews and summarizes the many awards on this issue and affirms the principle that Rule 17 does not obligate the Carrier to list any detailed job description in the bulletin.

We have reviewed the awards cited by the Employees. They are not applicable to this case. The awards previously mentioned are all on this property. They present good reasons for the acceptance of the stare decisis doctrine.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.