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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6418
Docket No. 6255
2-EN-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated the contractual rights of Havre, Montana Carman Edward Winchell when they arbitrarily removed him from his position as wrecking engineer on the Harve, Montana derrick.
2. That accordingly the carrier be ordered to compensate Edward Winchell as follows:

14½ hours	5/4/70	24 hours	7/31/70
24 hours	5/25/70	26¼ hours	8/1/70
24 hours	5/26/70	23¼ hours	9/24/70
25½ hours	5/27/70	4½ hours	11/26/70
27 ¾ hrs.	5/28/70	36 hours	11/27/70
27 hours	6/26/70	24 hours	11/28/70
25½ hours	6/27/70	24 hours	11/29/70
25½ hours	6/28/70	25½ hours	11/30/70
24 hours	6/29/70	18 hours	12/19/70
27 hours	6/30/70	25½ hours	12/20/70
25½ hours	7/28/70	18 ¾ hrs.	2/12/71
24 hours	7/29/70	36 hours	2/13/71
24 hours	7/30/70	24 hours	2/14/71
24 hours	2/15/71	24 hours	2/21/71
25½ hours	2/16/71	24 hours	2/22/71
25½ hours	2/17/71	24 hours	2/23/71
24 hours	2/18/71	24 hours	2/24/71
24 hours	2/19/71	24 hours	2/25/71
24 hours	2/20/71	7½ hours	2/26/71

Making a total of 1,353 hours at the pro rata rate, which represents the hours of wrecking service denied claimant due to carriers action, and that he be further compensated six (6) cents per hour for each hour worked between March 16, 1970 and March 16, 1971 for a total of 2088 hours, which represents the difference in wrecker derrick operators rate and cab carpenters rate during the period in 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 claimant was regularly employed as a Carman at Carrier's Havre, Montana Car Shop with bulletined hours 7:00 A.M. to 3:00 P.M.; Saturday and Sunday as rest days. In addition he held the position of Wrecker Engineer on the wrecking crew operating out of that location. In March of 1970, he successfully bid for a vacant position of Locomotive Carman at the Havre Diesel Shop with bulletined hours 11:00 P.M. to 7:00 A.M.; Friday and Saturday rest days. Upon his assumption of the new position, Carrier declared the Wrecker Engineer position vacant, bulletined same and assigned it to the senior Carman bidder.

Petitioner charges that the removal of Claimant from the Wrecker Engineer assignment by the Carrier was violative of the controlling agreement.

Carrier contends that the claimant vacated the Wrecker Engineer position when he bid for and accepted the locomotive carman post. It alleges that the job from which he bid-off was actually that of Wrecker Engineer - Carman, a composite classification. The posted bulletin of vacancy when claimant bid for the wrecker assignment specified, in accordance with requirements of Rule 4 (c) of the Agreement, that the bulletined hours therefor were 7:00 A.M. to 3:00 P.M. with Saturday and Sunday rest days and the location was the Havre Car Shop. The locomotive carman position had different scheduled hours, rest days, and is in a different shop. In addition, Carrier submits that the wrecking crew is drawn from the freight carmen category pursuant to Rule 85 (a) of the then controlling agreement which reads:

"Differentials. Wrecking engineers. Seven and two-tenths cents (7.2¢) per hours above freight carmen's basic rate".

It further cites Rule 4 (e) which states in part:

"Exercising Seniority. Employees exercising seniority under this rule ... will not be permitted to hold rights to more than one bulletined job."

The pertinent portions of Carrier's Submission assert several significant propositions. This Board has consistently sustained management's discretionary

authority to arrange job assignments and establish work schedules in order to effectuate efficient, effective, and safe operations. However, in the exercise of this right, there may not be an invasion of contractually provided employee benefits and rights. It has long been recognized that membership on a regularly assigned wrecking crew created a dual status because performance of the duties thereof are irregular and intermittent. There is no way of knowing when employees will be called out to work on a derailment. Great stress was placed by the Carrier that neither Claimant nor his Organization challenged the setting forth of scheduled hours in the posted bulletin for the wrecker engineer vacancy bid on by the Claimant in 1969. It appears appropriate to recite here the saying, "If the shoe fits, why question the incorrect size label?". Claimant was the senior bidder and no one was deprived of any right when he was assigned to the position. The fact is that at the time, the specified hours on the bulletin and his then regular schedule as a Carman were the same and no problems, warranting protest, arose. Carriers would vigorously and rightfully reject any claim by employees who accepted regular assignment to wrecking crews that their obligation to respond to a call to serve thereon was limited to their scheduled hours. It must be held that only those items of a posted bulletin for bid meaningfully related to the job functions and needs may be construed as binding upon the subsequent occupant of the position. (See Award 3898.) This principle is equally applicable to the fact that location of the position was listed as the "Car Shop". The uncontroverted information provided is that the "Diesel Shop" is located in the same Yard, a short distance from the Car Shop and either the record herein nor any cited provision of the controlling agreement restricts membership on the wrecking crew to those carmen working in a particular part of the Yard. In fact, a single seniority roster for carmen at Havre covers all employees so classified employed at the repair track, shop inspection yards, and diesel shop.

The Carrier's assertion that membership on the wrecking crew is limited to freight carmen, may not be occupied by an employee in a classification for which a differential is paid, or one which is a bulletined position, has no support in any of this Board's decisions, or in the controlling agreement. Petitioner's statement, with specific examples that the contrary was regularly practiced on the property was not rebutted. Rule 88 states that "Wrecking Crews, including derrick operators and firemen, will be composed of Carmen ...". Rule 83 sets forth the scope of the work of the carmen category and Rule 99 shows the various classifications of carmen, to wit: "Passenger carmen, engine carpenters, planing millmen, air brakemen, passenger car and locomotive painters, upholsterers, interchange and passenger car train inspectors: freight carmen including freight car painters". All of these positions are subject to Rule 4, (a) which states, "New positions or vacancies of more than thirty days will be bulletined ..." and (c) provides, "Employees may bid upon a vacancy which involves a higher rate of pay, a greater number of hours of service, a different assignment of rest days or a different shop location (where more than one shop is included in a single shop roster), or a different shift than their existing assignment...". It is obvious that all of the carmen categories are therefore "bulletined jobs". If Rule 4 (e), quoted hereinabove, were intended to apply to wrecking crew assignments, Rule 88 would have no meaning. It would appear that the carrier spokesmen who participated in the drafting of the basic agreement would be the first to protest, with vigor, if the most qualified men in the carmen category would not be made available for this significant function because they advanced to

a higher classification within said category. Clearly, Rule 88 excepted the wrecking crew from the cited limitations of Rule 4 (e).

In Award 5807, (Stark), this Board reviewed with great care and at length the manner with which we considered proper treatment of "dual status" positions such as wrecking crew assignments. We concluded as follows:

"Rule 18, of course, contains no exceptions and, thus, on its face, does not open the way to barring any qualified Carman from a wrecking assignment. Nevertheless, as indicated by Awards 3898 and others, this Rule must be applied reasonably. As stated there, "if a change of basic position were to develop a conflict so that continued availability for wreck crew duty was no longer possible his status as such would have to be discontinued". But when men are reasonably available, there is no contractual basis for excluding them from a wreck crew assignment, in our estimation, merely because of possible difficulties in replacing them on occasion. Rather, such problems can best be resolved by mutual agreement of the parties as, evidently, has been done at other locations..."

In Award 6109 (Simons), this Board adopted the "prudent postulate set forth in Third Division Award 10911, namely:

' ... in the absence of any showing that previous Awards are patently erroneous ... we must follow them ..."

The unilateral addition of conditions placed by the carrier in its 1969 bulletin for filling of the wrecker engineer vacancy was not in accord with the standards enunciated in Award 5807. The record does not satisfy the need for a clear showing that claimant's assumption of the locomotive carman position in the Diesel Shop at Havre made him inaccessible for wrecking crew call-out. The failure of claimant and his organization to protest the bulletined special conditions when first published and when their presence incurred no deprivation of a right or benefit, does not preclude introduction of objection thereto at a time when they have a detrimental effect.

The Carrier's contention that the claim before this Board is not the same as that filed and progressed on the property lacks merit. There is no inconsistency between the original grievance and the more explicit terms ultimately submitted. The record clearly discloses that the Petitioner, at the request of a Carrier officer participating in the processing of the claim, presented the specifics exactly as submitted to us, to the highest officer designated by the Carrier for the handling of claims, by letter dated April 19, 1971, which was more than seven months prior to the commencement of the Board proceedings on the claim by the Petitioner.

Based upon the foregoing, it must be held that Carrier's determination that claimant became ineligible for wrecker crew membership when he accepted the locomotive carman position was violative of the controlling agreement.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of January, 1973.