

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7210
Docket No. 6988
2-SPT-EW-'77

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
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(Southern Pacific Transportation Company
(Texas and Louisiana Lines

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company failed to physically execute Bulletin Award 11-A, dated March 4, 1974, in awarding Position No. 2 - Location 2189, to Lineman-Equipment Installer J. D. Ward, the successful applicant, in a continuing violation of Rule 13 of the controlling agreement.
2. That, accordingly, the Carrier be ordered to physically execute the assignment change awarded in Bulletin 11-A to Equipment Installer J. D. Ward.

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, Class A Lineman, held the temporary position of Radio Equipment Installer, Position No. 9, Location No. 2109, with headquarters at San Antonio, Texas. The duties of this position involved primarily responsibilities for servicing and maintaining district pole lines.

On February 19, 1974, Carrier posted a Linemen's Vacancy Bulletin advertising for bids the temporary position of Radio Equipment Installer, Position No. 2, Location No. 2189, home station at San Antonio; Texas. The prior incumbent of this position was assigned and performed radio bench work.

Claimant bid for Position No. 2. Linemen's Assignment Bulletin No. 11-A, dated March 4, 1974, awarded Position No. 2 to Claimant. Position No. 9, vacated by Claimant, was bulletined and on April 10, 1974 awarded to Mr. G. C. Weber who had less seniority than Claimant.

Claimant was continued on the general line work assignment performed by him while incumbent of Position No. 9, Mr. Weber, was assigned to the radio bench work which had been performed by Claimant's predecessor in Position No. 2.

The claim at issue is that the failure to assign the radio bench work of Position No. 2 to Claimant, as the successful, applicant for that position, violates Rule 13 of the controlling agreement.

Carrier contends that because none of the nine equipment installers at San Antonio can be expected to efficiently perform all work required by the multitudinous variety of equipment involved, it must be allowed to assign work within the equipment installer's classification to the individual "best suited" for the work. Carrier argues that claimant's assignment was proper under Rule 2 and in accordance with Rule 13 in that the language of bulletins advertising Radio Equipment Installer position vacancies uniformly stated in identical wording that Linemen assigned as equipment installers may be required to perform linemen's work.

"Classification of Work", Rule 2, of the applicable agreement provides, in part,:

"Linemen's work includes the work designated in Classes A, B and C of this rule; also other work generally recognized as linemen's work ..."

Class A includes "Linemen assigned as equipment installers ..."

Rule 13, "Bulletining Vacancies," reads to the extent pertinent, as follows:

"When new jobs are created or vacancies occur in the respective classes, the oldest employees 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 vacancies or new jobs created will be bulletined.

"Bulletins must be posted ten (10) days before vacancies are filled permanently... Assignment will be made and the successful applicant assigned within thirty (30) days following expiration of bulletin.

"An employee exercising his seniority rights under this rule will do so without expense to the Carrier; he will lose his right to the job he left, and if after a fair trial he fails to qualify for the new position, he will have to take the position may be open in his craft.

"BULLETINING TEMPORARY VACANCIES

"Vacancies known to be of thirty (30) days or more duration will be placed under bulletin as temporary vacancies and assignments made in the manner provided in this rule..."

Rule 2 defines generally the types of linemen's work which may be assigned in the respective classes. Rule 13 specifically regulates the assignment of a position when a vacancy occurs. Job content is an essential ingredient of a position and necessarily follows the assignment of a vacancy to the successful bidder pursuant to the rule.

Thus, the assignment of Radio Equipment Installer Position No. 2 to claimant in accordance with the procedures for filling vacancies under Rule 13 transferred to him the job content of that position, which included radio bench work. Under the established canons of contract interpretation, the specific provisions of Rule 13 covering the filling of vacancies must be construed to prevail over and qualify the meaning and effect of the general provisions of Rule 2. The unilateral statements in the vacancy bulletins concerning the assignability of linemen's work do not blunt the governing effect of Rule 13.

Furthermore, Rule 13 explicitly grants preference to a senior employee in filling vacancies "if sufficient ability is shown by trial." Under this standard, Claimant's ability to perform the work of the vacant position must be measured or matched against the requirements of the job. Under the Rule 13, such measurement of ability may be made by "fair trial". No provision of the rule permitted comparison of Claimant's qualifications with the qualifications of other employees; and it was improper for Carrier to do so.

Accordingly, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of January, 1977.