

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 21(a) of the June 1, 1960 controlling agreement at North Little Rock, Arkansas when they abolished the Battery Room Position in bulletin No. 240 dated June 11, 1975 and advertised incorrectly two (2) positions as one in bulletin No. 242 dated June 11, 1975, i.e., advertised Electric Shop and Battery Room, one of which (Battery Room) has the same duties of the same position abolished in bulletin No. 240 dated June 11, 1975.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to re-establish the Battery Room Position, without duties in the electric shop, and Electrician Lenderman be allowed to place himself on the job if he so desires.

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 is employed by the Carrier as an electrician at the Carrier's Pike Avenue Diesel Facilities in North Little Rock, Arkansas. Claimant held a position in the Battery Room performing work which consisted mainly of recycling and replacing of locomotive batteries and associated parts. On June 11, 1975, the Claimant's position was abolished by bulletin No. 240 and a new position was established by bulletin No. 242. According to bulletin No. 242, the bids for the new position, advertised as a combination Electric Shop and Battery Room position, were to be received until June 18, 1975.

The new position was awarded to the most senior bidder whose seniority date was September 21, 1968. The Claimant, whose seniority date is March 20, 1952, chose not to bid on the new position.

The Organization takes the position that the new job, titled Electric Shop and Battery Room, entailed strictly Battery Room work, and therefore that the new job is merely a re-establishment of the Claimant's former Battery Room position. It is the Organization's position that the Claimant should be reassigned to the new job under the provisions of Rule 21(a) of the controlling Agreement. Rule 21(a) reads, in pertinent part, as follows:

"Positions that have been abolished (not as a result of force reductions) and re-established within six months, the employee regularly assigned to the position at the time of its abolishment will be reassigned to the position regardless of seniority provided he applies therefor when the position is bulletined."

The Organization takes exception to the Carrier's contention that there was not enough work in the Battery Room to constitute a full time job. It is the Organization's position that the position was worked full time in the Battery Room between the time that the assignment was bulletined and the time that the instant grievance was filed. It is also the Organization's position that the filing of the grievance brought about the Carrier's actions of working the position as it was bulletined, i.e. Electric Shop and Battery Room.

The Carrier counters that during the first month and one-half that the newly established position existed, a substantial amount of time was spent working in the Battery Shop due to the backlog which had occurred when the former position was abolished and the new one established.

It is the Carrier's position that, due to a general business decline, there no longer existed sufficient work in the Battery Room to justify the assignment of a full time electrician. The Carrier states that the occupant of the newly established position spends less than half of his time performing battery work and the remainder of his time performing other varied electrical work at the electrical shop. It is the Carrier's position, therefore, that the abolished job and the newly established job are not the same. Furthermore, the Carrier takes the position that even if the two jobs were, in fact, the same job with a different title, the Claimant himself nullified the Organization's contention that Rule 21(a) supports the grievance when he elected not to bid on the newly established position as required by Rule 21(a). Carrier contends that the claim should be denied since Rule 21(a) does not support the claim and no other rule was cited by the Organization.

This Board can find no evidence to support the claim of the Organization that Rule 21(a) of the controlling Agreement was violated. The facts are clear. The Battery Room position was abolished and the duties which were

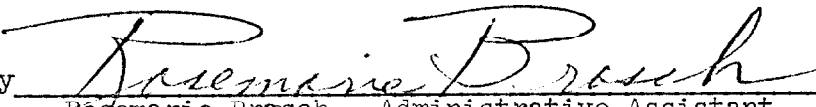
involved in that position were covered by a newly established position which was a combination Electric Shop and Battery Room position. The Claimant takes the position that Rule 21(a) of the Agreement gives him reassignment rights to the newly established position since he was the incumbent of the former Battery Shop position. However, Rule 21(a) states in clear, mandatory and unambiguous language that, "... the employee regularly assigned to the position at the time of its abolishment will be reassigned to the position regardless of seniority provided he applies therefor when the position is bulletined." (Emphasis added) The Claimant in the instant claim elected not to bid on the newly established position when his former position was abolished. By failing to apply for the new position, the Claimant forfeited any rights which he may have to be reassigned to that position under the terms of Rule 21(a) of the Agreement. This Board finds no evidence that Rule 21(a) of the controlling Agreement has been violated by the Carrier. Therefore, the claim shall be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1978.