

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. The Chicago and North Western Transportation Company violated the controlling agreement when it unjustly deprived Freight Car Repairman W. H. Palmer of his contractual rights when it abolished his job assignment as a high-wide inspector in the Milwaukee Terminal on July 21, 1977; and assigned identical position to the mechanic-in-charge.
2. That the Chicago and North Western Transportation Company be ordered to restore Freight Car Repairman W. H. Palmer to his former position as high-wide inspector, which is contractually his in accordance with Rules 16, 21, 25, 28, 29, 53, 124, and 137 of the controlling agreement, and Article # 7 of the August 21, 1954 Agreement.

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 organization contends that carrier violated the collective agreement (specifically, Rules 16, 21, 25, 28, 29, 53, 124, and 137, and Article No. 7 of the August 21, 1954 agreement) when it abolished claimant's job of high wide inspector and assigned identical duties to a mechanic in charge. Carrier argues that because of Rule 29, past practice, and because claimant was not qualified to do the work, it acted properly in assigning high wide inspection duties to a mechanic in charge. Thus, it claims, no contract violation exists.

Simply stated, the issue in this case is: does claimant have the right to the high wide inspector's job at carrier's Butler Facility? From the

record before us, this Board concludes that he does. The position was designated by the posted job advertisement as Job 021--with duties described as inspecting and measuring loads in the Milwaukee Terminal. The position was awarded to claimant on July 8, 1977. It was advertised as a permanent, new position.

On July 29, 1977, carrier abolished the job and shortly thereafter assigned the high wide inspector work to the mechanic in charge at Butler. By so doing, carrier violated Rule 25, which states in pertinent part: "When jobs are abolished (not under a reduction of force) for a period of six months or less, men affected by such abolition will be restored to their former positions upon re-establishment of jobs."

Carrier erred by relying on Rule 29 to support its action in this case. Rule 29 cannot be interpreted to mean that mechanics in charge can be assigned carmen's duties in trainyards that employ more than five men. For this Board to decide otherwise would be to give meaning to Rule 29 that does not exist. That decision would be illogical. Rule 29 was bargained into the agreement to protect carmen's work, not to give carrier the license to assign mechanics in charge to carmen's duties.

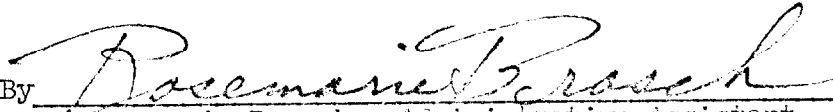
In its rebuttal, Carrier clearly states that claimant was taken off the job in question because he was not qualified to do the job. The job was assigned to the mechanic in charge because he did possess the proper qualifications. It is not for this Board to judge the qualifications of claimant to do the work assigned. It is its responsibility, however, to see that claimant's contract rights are upheld. If claimant is not qualified to perform the work, he should be properly disqualified and the job rebid. Carrier cannot abolish the job and unilaterally reassign the identical work on a non-bid basis.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of October, 1979.