

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That the Denver and Rio Grande Western Railroad Company violated the provisions of the Controlling Agreement when it failed to bulletin specific positions in the Burnham Steel Car Shop.
2. That the Carrier advertise by bulletin the positions of Panograph Machine Operator, Bolster Machine Operator and the three positions in the Pre-Fab Shop, which are presently held by carmen by assignment, rather than by bid.
3. That senior employees availing themselves by application and bid be assigned to said positions.
4. That these positions be assigned by bid to avoid depriving senior qualified carmen their rights of seniority.

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 employes 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.

Over the past two years, the Carrier, the Denver and Rio Grande Western Railroad Company, has added new equipment to its Denver, Colorado, Freight Car Shop, known as Burnham Shops.

The Carrier established Carmen positions to operate these new machines. The Organization filed a claim alleging that the Carrier improperly bulletined these jobs, placed junior employes in the positions, and violated the seniority rights of other Carmen.

The Organization contends that the Carrier violated Rule 15 of the current Agreement when it did not bulletin these jobs and merely placed junior employees in the positions.

Rule 15 provides:

- "(a) In filling new positions or vacancies in the respective crafts, the oldest employe in point of seniority bidding on bulletin thereunder shall, if sufficient ability is shown by fair trial, be given preference in filling such positions or vacancies.

Note: Assignments of employes in charge of wrecking crews, or as wrecking engineer, will not be considered as vacancies under this rule, and employes for these jobs will be selected by the Management in accordance with the established practice.

- (b) All new positions and vacancies shall be bulletined for five (5) days before being permanently filled.
- (c) An employee exercising his seniority under this rule, after a fair trial, failing to qualify, shall be permitted to displace only the youngest employe in his craft, in case a new position or vacancy is filled in accordance with this rule, and the applicant fails to qualify, the next applicant in order, qualified to do the work, will be assigned to the position.
- (d) If there are no applicants under the bulletin, or if those applying are not sufficiently qualified to do the work, the position will be filled by the assignment of junior employe qualified to do the work.
- (e) Employes exercising seniority rights under this rule will do so without expense to the company.
- (f) Copy of application filed under a bulletin shall be given to the Local Chairman, if desired."

The Organization argues that although this work is Carmen's work and may be assigned to Carmen in line with their normal job duties, these new positions should have been bulletined under Rule 15 so that senior employees could have exercised their seniority rights to take the desirable work assignments.

The Organization contends that if the Carrier changes the duties of a position, it becomes a new job for the purposes of Rule 15. The Organization argues that the Carrier did install new machines and institute new procedures. Consequently, argues the Organization, these new positions should have been bulletined pursuant to Rule 15.

The Carrier argues that it has applied Rule 15 in the same way for at least forty years--by stating in a bulletin that a vacancy exists, listing the number of Carmen needed, and listing any required qualifications. The senior bidder is then assigned to the vacancy. The Carrier contends that it followed this procedure in the instant case. The Carrier contends that the Organization has acquiesced in this procedure and is, therefore, time-barred from filing this claim.

The Carrier contends, in addition, that the Organization's acquiescence to its bulletin procedure estops the Organization from denying that Carrier's application of Rule 15 was valid.

In addition, the Carrier contends that Rule 15 does not require that specific duties be detailed in the bulletin; rather, it is evident that when a Carmen's position is advertised, the position involves Carman's work. On October 9, 1981, the Chief Mechanical Officer of the Carrier denied the Organization's claim and stated:

"I disagree with your contention that Rule 15 is being violated by Carrier's failure to bulletin individual jobs within the Steel Car Shop. Rule 15 only applies to filling new positions or vacancies and the Carrier, in its experience of managerial discretion, unilaterally decides when it is necessary and required to add new positions. Furthermore, Rule 15 was not intended to establish a pecking order for each item of carmen's work or machine within a shop or yard where carmen are assigned.

The agreement is not being violated. Your assertions and position are denied."

Moreover, the Carrier argues that seniority rights do not allow an employee to choose only the particular types of Carman's duties that the employee wants to perform. Carrier contends that the bulletin in this case was descriptive enough. The Carrier contends that business efficiency requires that the Carrier itself assign particular Carman's duties to its Carman employees.

Finally, the Carrier argues that the Organization has not met its burden of establishing that the Carrier violated any rules of the Agreement.

This Board has reviewed all of the facts and arguments in this case and finds that although the Organization has characterized this case as a "seniority issue", that terminology really does not accurately define this matter. This Board recognizes the importance of seniority and the rights of long term employees that are protected by Rule 15 of the Agreement, which requires that the senior employees be given preference in filling job vacancies. Certainly, the Organization is entitled to have Rule 15 enforced when violations of it occur. However, there has been no violation of Rule 15 here.

This case involves the Organization's position that in bulletining the job vacancies at issue, the Carrier did not post specific enough job descriptions to enable the more senior employees to intelligently bid on those jobs. Since these jobs contain certain duties that Carman are assigned that are more preferable than others, the Organization contends that the vague job descriptions that were posted did not allow the senior employees the right to knowingly exercise their seniority rights.

However, it is clear that Rule 15 places no restrictions on the Carrier as to what or where vacancies or positions must be bulletined, nor is there any requirement that the Carrier detail the specific job duties in every bulletin. Various rules in the Agreement describe the duties of Carman Mechanics, detail the Carman Mechanic work, and set forth the work requirements. There is no provision in Rule 15, or in any other rule in the Agreement, that a Carman may exercise his seniority to select preferable items of work or a particular machine.

In Award No. 3888 this Board held:

"It is established that the Carrier has never specified particular work or operations in the bulletins issued for machinist vacancies in the Car Department Wheel Shop. Management states the practice, and its own intention, have always been to avoid a condition whereby machinists would acquire individual rights to a particular kind of work--thus, impairing the efficiency of the overall operation. The Carrier further states that no specific kinds of work in the shop require full-time performance on the part of a machinist."

Moreover, in Award No. 6091 we held:

"The reference in the bulletin to the applicable job titles, in describing vacancies and newly created jobs, satisfies the posting requirements of Rule 7. If the parties were to desire that the bulletin set forth a more precise delineation of job duties and work areas than is presently called for under Rule 17, it is their responsibility to negotiate an appropriate revision of or amendment to Rule 17. Obviously, the parties have not authorized this Board to do that for them."

Finally, in Award No. 3144 we held:

"Rule 39(c) does not govern the manner, method or type of service which may be required of an employee, nor alter the prior practice on bulletining jobs and making work assignments. It simply establishes the minimum information necessary on job bulletins. The specification of location must be deemed to conform to the established custom of a fixed point to go on and off duty, rather than as a limitation of the geographical boundaries within which service is to be performed. The latter is not possible because all admit that service must be performed in industry yards and on line of road."

Similarly, Rule 15 does not require what the Organization is seeking in this case in terms of a more specific job description. This Board understands the issue being raised by the Organization, but the solution to that problem lies in negotiating new language to incorporate in the rule. This Board is bound by the present language of the rule, which does not give this Board the authority to order what the Organization is seeking.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1985.