

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10735
Docket No. 10506
2-D&RGW-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(The 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 the position of Pettibone Operator at the North Yard Repair Track in accordance with Rule 15 and deprived senior qualified Carmen of their seniority rights.
2. That the Denver and Rio Grande Western Railroad Company violated the time limit provisions of the agreement when Division Car Foreman McCall failed to disallow the claims submitted by Local Chairman Lell within sixty (60) days.

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 employees 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 Carrier operates a Freight Car Shop and Repair Track at Denver, Colorado, where rail cars are rebuilt, repaired and maintained. The Carrier uses Pettibone cranes as part of its equipment to accomplish these repairs. Prior to January 23, 1982 the Carrier used Carmen helpers to operate these Pettibone cranes, bulletining and awarding the jobs through seniority. Because of a decrease in business, the Carrier furloughed all of the Carmen helpers as of January 22, 1982; the Carman helper position of Pettibone crane operator allegedly was abolished along with the other Carmen helper positions.

The Organization contends, however, that the Pettibone crane operator position still exists, and that it is being performed by Carmen, but that it is not being awarded on the basis of seniority, as the contract requires. The Carrier contends, however, that the tractor crane is not in use on all days, and that therefore there is not a full-time vacancy available which must be bulletined and awarded by seniority.

Both parties have put forth various procedural issues which must be addressed first. The Carrier contends that the Board has no jurisdiction over this claim because only a telephone conference, not a conference on the property, was held prior to bringing this claim before the Board. Section 3, First (i) of the Railway Labor Act, requires that, before coming to the Board, disputes must be "handled in the usual manner up to and including the chief operating officer of the Carrier designed to handle such disputes." The Carrier contends that the usual manner of handling disputes on the property is to hold a conference over the dispute in the Office of the Director of Personnel, and that only a brief long-distance telephone conference occurred here. The Board has reviewed the correspondence between the parties and note that the Carrier did not raise this issue until its Submission before this Board. Because the Carrier has failed to raise this question previously, and because the responsible parties were located in different geographic locations, the Board concludes that the conference was within the limits of the parties' usual way of handling disputes, and that the Board has jurisdiction.

Secondly, the Carrier contends that the grievance is not framed correctly because it does not name the employees involved, makes no demand on the Carrier, and contains no date of occurrence on which the grievance is based. In the Board's view the instant claim is made on behalf of all the Carmen in the department especially those signing the "protest" which prompted the claim. The claim requests that the Carrier bulletin the position, and states that the violation has been ongoing since January 23, 1982. Although the claim could have been more specific in some of its details, this problem involves the weight to be given to its assertions, and does not totally divest the Board of jurisdiction.

The Organization also makes a procedural objection, claiming that the Carrier's initial response to the claim was received more than sixty days after the claim was filed. The response is dated within the sixty-day limit, however, and the Organization's handwritten notation on the response that it was "Received in coach shop" on a date outside the sixty-day period is less convincing than a date stamp or some other more official form of documentation. Therefore the Board does not believe that the Organization has met its burden of proving that the response was not timely. Thus the Board shall proceed to the merits of the claim.

Under Rule 15(a) and (b) of the controlling Agreement, "all new positions or vacancies" must be bulletined and filled by seniority. The Carrier argues that Rule 15 does not apply because there was no new position available as Pettibone crane operator. If there was sufficient work for a full-time crane operator, after the Carmen helpers were furloughed, however, then the Pettibone crane operator position should have been treated as a new vacancy

among the Carmen. It should have been bulletined and described as a crane operator position, because the prime objective of bulletining positions is to give the employees sufficient information about the job to determine whether this is a desirable position, worthy of their exercise of their seniority rights. Second Division Award No. 2294.

The problem with the instant claim, however, is that the Organization has not successfully convinced the Board that the crane operator is a full-time position. The Carrier contends that crane operator work is not done every day. The Organization has not countered this claim with any evidence that this is a full-time position.

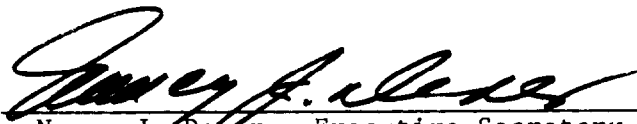
If there is not a full-time vacancy, then the Carrier acts within its rights when it assigns the part-time crane operator work to various Carmen, without going through the seniority list. Because the Organization has failed to present sufficient evidence to conclude that this is a full-time position, the Board must deny the claim.

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 19th day of February 1986.

