

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Harlan Blount was deprived of his contractual right to be awarded Job 004 at Missouri Valley, Iowa, to a Carman from Council Bluffs effective December 21, 1981.
2. The Chicago and North Western Transportation Company violated Article V 1(a) of the August 21, 1954 Agreement when it failed to respond to claim dated January 20, 1982, within the sixty (60) day time limit.
3. That the Chicago and North Western Transportation Company be ordered to award Job 004 to Carman Harlan Blount, and make him whole for all overtime earned on the 400 truck since it was assigned to Missouri Valley, dating from December 21, 1981.

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.

On November 21, 1981, Claimant Harlan Blount was furloughed from Carrier's Missouri Valley facilities. At this time, Claimant was the senior laid-off Carman at this point. Subsequent to his layoff, Carman Blount filled a vacancy at Carrier's Des Moines, Iowa Yard approximately 150 miles from his furlough point. On the same date as Claimant's furlough, the CNW bulletined Job 004, Freight Car Repairman-Welder, which was a position to be occupied at Missouri Valley.

Carrier also asserts that the Controlling Agreement allows Management to select qualified bidders for bulletined positions. According to Carrier, Claimant was not and did not attempt to become a qualified Welder, nor did he obtain the requisite chauffeur's license, thus leaving Carrier no choice but to award the Missouri Valley vacancy to the more qualified, albeit junior, Carman.

Carrier's argument on the merits is appealing. The contract and Board precedent recognize a Management right to fill bulletined positions with junior qualified persons, provided that those employees who are more senior are given a fair trial. However, this Board need not consider the merits of this dispute until we determine compliance with the procedural requirements of the August 21, 1954 Agreement.

An analysis of the procedural aspect of this dispute must begin with an examination of whether the Board in its appellate capacity can rightfully consider Carrier's Exhibit A, the disputed letter of declination. The record shows that the Local Chairman on April 16, 1982, and the General Chairman on the dates of April 27, 1982, and January 11, 1983, both called Management's attention to Carrier's time limit violation. The Board finds Carrier could have rectified the alleged omission by simply supplying Organization with a copy of the Division Manager's letter while this dispute was still on the property. For whatever reason, Carrier did not provide the critical letter until it became an attachment to Carrier's Submission. It is well established that this Board cannot consider new evidence which was not developed on the property (see Awards Nos. 7264, 8197, 8303, 8450, and 9063). As a result, this Board must rule that Carrier's Exhibit A is inadmissible and must further find that Carrier violated the time limit embodied in the August 21, 1954 Agreement.

Since the Carrier failed in its bargained-for procedural requirements, the Board declines to analyze the merits of the case. We need only at this point to determine the remedy.

The Claim as presented requests relief in the form of awarding Claimant not only Job 004, but also to make him whole for all overtime worked on the 400 Truck. Article V 1(a) of the 1954 Agreement stipulated the remedy for non-compliance in such cases, thus allowing the Claim as presented. However, since Job 004 was abolished after one (1) month, there is no job for Claimant, if qualified, to occupy. This Board has no power to create positions.

Consequently, Claimant is awarded all overtime payments accrued to the operator of the 400 Truck between the dates of December 21, 1981 to January 18, 1982.