



Award No. 15523

Docket No. MW-15983

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CLINCHFIELD RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned the position of Carpenter Second Class in Utility B&B Gang No. 5 to Mr. G. E. Hobbs, who is junior to Mr. Floyd Byrd, a senior applicant therefor.

(2) Bulletin No. 628 was an improper bulletin because it stipulated that applicants for the second class carpenter's position should be qualified as welders.

(3) The Carrier violated the Agreement when it eliminated Mr. W. C. Lewis from the Carpenter first class seniority classification.

(4) Mr. Floyd Byrd be allowed the difference between what he was paid as a B&B Helper and what he would have been paid at the rate of a carpenter second class, beginning with January 25, 1965, and continuing until the violation referred to in Part (1) is corrected.

(5) Bulletin No. 628 be rescinded and all assignments made thereon be nullified, as well as any seniority acquired or lost because of said erroneous bulletin.

(6) Mr. W. C. Lewis' seniority as carpenter first class be restored to what it was prior to the violation referred to in Part (3) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier issued a bulletin reading:

"Erwin, Tennessee
December 23, 1964
Bulletin No. 628

TO ALL CONCERNED:

The following positions in camp cars are advertised for a period of ten days, Utility B&B Gang No. 5:

Positions

Lead Carpenter — Successful applicant must be able to handle material reports, payroll reports and distribution of labor. Pass writ-

OPINION OF BOARD: By Bulletin No. 628, Carrier advertised three positions in Utility B&B Gang No. 5: Lead Carpenter, Carpenter 1st Class, and Carpenter 2nd Class. The bulletin stated that applicants for the Carpenter 2nd Class position would have to be qualified electric welders, but that this requirement would be waived if either the Lead Carpenter or the Carpenter 1st Class position should be filled by a qualified welder.

D. D. Allen applied for both the Lead Carpenter position and the Carpenter 1st Class position. No other applications were received for these two positions, so he was assigned to the Lead Carpenter position. The Carrier then notified the senior carpenter holding Carpenter 1st Class seniority but working as a Carpenter 2nd Class, W. C. Lewis, that he must fill the Carpenter 1st Class position in Utility B&B Gang No. 5 or forfeit his seniority as a Carpenter 1st Class. Lewis refused to fill this position; another person was assigned to it, and the Carrier eliminated Lewis from the Carpenter 1st Class seniority classification.

Since neither of the persons who had filled the top two positions in Utility B&B Gang No. 5 was a qualified electric welder, the Carrier insisted that the person filling the Carpenter 2nd Class position be so qualified. Floyd Byrd applied for the position, stated that he could weld, and was given a standard arc welding test. The Carrier determined from the test that Byrd knew nothing about welding, and assigned G. E. Hobbs, a junior employe who could weld, to the position.

The Employees first contend that Bulletin No. 628 was an improper bulletin because it stipulated that any applicant for the Carpenter 2nd Class position must be a qualified electric welder. This contention is without merit. Rule 53(a) of the controlling Agreement specifically recognizes that Bridge and Building employes can be required to use electric torches. Rule 53(a) overcomes any contrary presumption that might be created by Rule 4, a rule establishing seniority groups and classes and which provides for a Welding Group in the Track sub-department.

The Employees also contend that Bulletin No. 628 does not conform to the bulletin requirements established by Rule 9 and that it and all actions taken under it must, therefore, be rescinded. Without question, Bulletin No. 628 does not follow the form established by Rule 9. However, this attack on the bulletin is not properly before this Board. The Employees' statement of claim attacks the bulletin only for imposing the welding requirement on applicants for the Carpenter 2nd Class position. The Board is limited to the issues raised in the statement of claim. See Awards Nos. 6954 (Coffey), 10904 (Ray), and 11006 (Boyd).

The Employees next contend that this Carrier should not have demanded that W. C. Lewis accept the 1st Class position on Utility B&B Gang No. 5 in order to protect his seniority as a Carpenter 1st Class. The Employees argue that Rule 11 of the Agreement, which governs this situation, does not come into play unless "no applications are received" (as Rule 11 provides) and that an application was in fact received, even though from the same person who applied for and got the Lead Carpenter position.

The Board will not be tyrannized by such a literal use of words. True, an application was received. But there was no applicant, once D. D. Allen's other application (for Lead Carpenter) was accepted. The Carrier was only

giving effect to the meaning of Rule 11 when it notified W. C. Lewis that no qualified Carpenter 1st Class had bid on the position and that he would have to protect his seniority. No application that could have been accepted had been received, and the Carrier was clearly within its rights to act as it did.

The Employees next argue that Floyd Byrd should not have been denied the Carpenter 2nd Class position. This Board has already determined that it was proper for the Carrier to impose the welding requirement upon whom-ever filled the position. Applicant Byrd was given a test and found lacking in ability and merit. The Carrier was, therefore, entitled to reject his application. See Awards 7184 (L. Smith) and 14765 (Devine) of this Board. The Carpenter 2nd Class position was properly assigned to G. G. Hobbs, a person qualified to weld, even though junior to Floyd Byrd.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record, and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.