



Award Number 17360

Docket Number MW-17799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

- (1) Bulletins Nos. 12029 and 12030 were in violation of the Agreement because shown thereon were various duties and qualifications not properly required of the advertised positions. (System file E-311/1-5).
- (2) Bulletins Nos. 12029 and 12030 now be cancelled and the positions advertised therein be re-bulletined, deleting the above mentioned duties and qualifications."

EMPLOYES' STATEMENT OF FACTS: Under date of May 23, 1967, the Carrier issued bulletins reading:

"Knoxville, Tenn., May 23, 1967
File 94

BULLETIN NO. 12029

To Employees Concerned;

The following position is hereby advertised for bids in accordance with the Maintenance of Way Employees' Agreement. Applications should be sent to the undersigned where they will be received up to 12:00 noon, Wednesday, May 31, 1967. If bids are sent by U.S. mail, same must be postmarked before 12:00 noon on closing date of this bulletin:

Title of position—Foreman, District Gang No. 1

Location—LaFollette, Tenn.

Assigned work days—Monday thru Friday.

Assigned rest days—Saturday and Sunday.

Vacated by—

Account of—New position.

Rate of pay—\$521.7240 per month.

Permanent or Temporary—Permanent.

Brief description of duties—The successful applicant must hold a valid driver's license and be able to operate a hy-rail truck and will be required to participate and engage in the work. The main

If bids are submitted on more than one position under advertisement, please show your order of choice as 1st, 2nd, or 3rd choice, etc.

M. W. Cox,
Division Engineers.

CEM/r1

Cys—Mr. Jack Benson
Mr. O. W. Steffey
Mr. G. T. Bonner
Mr. E. J. Housley
Mr. R. P. Burdick
Roadmasters
Asst. Trk. Supvrs.
Motor Car Maintainers'

Since the aforequoted bulletins included requirements and qualifications not encompassed within the duties of the positions advertised, the undersigned General Chairman protested the bulletins, requesting that they be cancelled and that the positions be re-advertised.

The Carrier declined the protests as well as all subsequent appeals.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On May 23, 1967, Division Engineer Cox advertised by bulletins (Carrier's Exhibits "A" and "B") positions of district gang foreman at Etowah, Tennessee, and position of district gang foreman at LaFollette, Tennessee. The employees took exception to the bulletins on the grounds that the duties and qualifications as shown thereon were not proper, asked that the bulletins be cancelled and the positions readvertised. Carrier saw nothing wrong with the bulletins and would not comply with employees' request. Hence this dispute. Correspondence exchanged in connection therewith is shown by Carrier's Exhibits "C" through "K".

There is on file with the Third Division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: The complaint is that Bulletins 12029 and 12030 were in violation of the Agreement. The subject of bulletins is covered by Rules 14 and 15 of the Agreement. There is patently no violation of such rules.

We shall proceed beyond the technical aspect of this claim, since the Organization has not simply charged that the bulletins were improper but has also contended it would be a violation of the Agreement for the successful applicant to "operate a hy-rail truck . . . and participate and engage in the work . . . pull and tamp low joints, correct irregularities in line, check and correct bad gauge, pull insulated joints . . . etc."

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The position bulletined in each case is that of foreman of a two man crew. We do not believe the Agreement contemplates that two man gangs are improper or that where such are authorized the foreman is to be confined to supervisory duties only.

Petitioners further contend that Carrier had no right to require that the successful applicant have a valid driver's license. We do not believe the Agreement contemplates that a two man crew will be supplied with chauffeur nor that it prohibits Carrier from requiring that all persons who operate company vehicles be duly qualified and licensed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1969.