

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11031  
Docket No. 9845  
2-SP-CM-'86

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: (  
(Southern Pacific Transportation Company  
(Eastern Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 15, when they permitted Carman R. J. Richard to remain on a temporary position after being displaced from his permanent position, thus preventing him from exercising his seniority.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to permit Carman R. J. Richard to exercise his seniority by bulletin in line with Rule 15 and within a reasonable time.

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.

The background facts of this case are complex.

Claimant, R. J. Richard, occupied permanent Position No. 2021 as a Carman since August 24, 1980, at Carrier's Lafayette Train Yard/Repair Track, Lafayette, Louisiana.

On January 19, 1981, Carman J. C. Huval temporarily vacated Position No. 2105 as a Carman-Welder due to illness. Four (4) days later, Claimant filled the temporary vacancy subject to Carman Huval's return.

The sequence of events giving rise to the instant dispute began on May 8, 1981, when Carman G. Phillips' Position No. 2054 was abolished. In response, Phillips exercised his seniority and displaced Carman F. C. Richard (not to be confused with the Claimant R. J. Richard) from Position No. 2093 effective May 15, 1981.

The next action found F. C. Richard bumping Claimant R. J. Richard from the temporary vacancy in Position No. 2105; and Claimant, exercising his rights, bumped to regular Position No. 2023 which was occupied by F. A. Daigle who was on vacation at the time.

After initially approving the aforesaid bumping sequence, Superintendent J. W. Boudreaux, later that same day (May 15, 1981), issued a "Corrected Notice" disallowing F. C. Richard's bump into temporary Position No. 2105, which had been held by Claimant, and refilling that position, once again, with Claimant. In addition, Claimant was denied any further displacement rights while he occupied temporary Position No. 2105 until he was released therefrom by the return of the Position's permanent occupant, the ill J. C. Huval.

Denied his first choice (which was Position No. 2105 which was filled temporarily by Claimant), Carman F. C. Richard next bumped into Claimant's permanent Position No. 2021, leaving Claimant without a permanent position and without the right to occupy any available permanent job.

On February 16, 1982, Carrier was notified that Carman J. C. Huval had retired retroactive to December 17, 1980. Carman Huval's job was bulletined permanently on February 26, 1982 on Bulletin 3-C.D. 2105, and was awarded to Carman F. C. Richard on March 7, 1982. Thereafter, Claimant, who apparently was displaced from Position No. 2105 as a result of Carman F. C. Richard's assignment, successfully bid on open bulletin 4-CD-2014, which was a permanent position, and was assigned effective March 14, 1982.

Before this latter sequence of events, the Organization filed a grievance in protest of Carrier's action herein alleging that Carrier violated Rule 15 of the Controlling Agreement by not permitting Claimant to exercise his seniority rights in order to bid on a permanent position. Said Rule, in pertinent part, reads as follows:

"RULE 15  
Bulletining Vacancies

When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created, including the differential jobs as helpers, will be bulletined.

Bulletins must be posted five days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the officer in charge and a copy of the application will be given to the local chairman. Assignment will be made and the successful applicant assigned within seven (7) days following expiration of bulletin.

An employee exercising his seniority rights under this rule will do so without expense to the carrier; he will lose his right to the job he left, and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft."

According to the Organization, the aforestated Rule clearly established Claimant's bumping rights; and, consequently, Carrier erred by disallowing Claimant's attempt to place himself in a permanent position on May 15, 1981. In remedy of this action, the Organization requested as follows:

- "2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to permit Carman R. J. Richard to exercise his seniority by bulletin in line with Rule 15 and within a reasonable time."

Carrier's point in this dispute is that Claimant was outside the chain of displacement since he occupied a temporary position which was contractually unavailable to the more senior Carman F. C. Richard. Both Parties agree that Carman F. C. Richard could not bump into Claimant's temporary position because his own regular position was abolished and he would not have had any displacement rights when the incumbent employee returned to claim his position. The crux of this dispute, therefore, centers upon Claimant's right to bump from a temporary position to a permanent position. In this regard, Carrier maintains that "(T)here is no provisions (sic) in the agreement which allows an individual to be displaced from a temporary position except the permanent incumbent of such position when he returns from sick leave."

In addition to the foregoing, Carrier also argues that the entire Claim is now moot and should be dismissed or denied in its entirety since Organization's remedy request has already been satisfied by virtue of the fact that in March of 1982 Claimant did exercise his seniority rights as per Rule 15 and he successfully bid on bulletined permanent Position 4-CD-2014. (See Second Division Awards 2672 and 1017).

Fortunately, or unfortunately, as the case may be, the issue at bar became moot due to the retirement of Position No. 2105's permanent occupant, Carman J. C. Huval, on February 26, 1982, retroactive to December 17, 1980. Thereafter, Claimant, in subsequent developments, successfully bid and was awarded a permanent position. Claimant's requested relief thus was granted before this Board had an opportunity to decide the merits of the Claim which was presented to it. The Organization, nonetheless, would have us decide the dispute because the dispute is likely to arise again. If and when the issue does arise again, it will, at that time, be ripe for decision. Until that time, however, this Board will follow the sage version proffered in Second Division Awards 2672 and 1017, and conclude that the dispute lacks a controversy thus declining Organization's request to issue an advisory opinion in this dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.