Award No. 2603
Docket No. 2316
2-B&M-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

BOSTON & MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier violated the controlling agreement when it refused to recognize the displacement rights of Carman Kenneth Johnson and assign him to the position of Carman held by Rollin Ethier.

(2) That the Carrier be ordered to recognize the displacement rights of Carman Kenneth Johnson and assign him to the position of Carman currently held by Rollin Ethier.

(3) That the Carrier be ordered to compensate Carman Kenneth Johnson at the time and one-half rate for all services performed on and after April 29, 1955 due to his being compelled to perform service on a shift other than the regular assigned hours to which he was entitled to work under the current agreement had he been granted displacement rights.

EMPLOYES' STATEMENT OF FACTS: Carman Kenneth Johnson's position as carman at E. Deerfield, regular assigned hours 7:30 A.M. to 11:30 A.M.—12 Noon to 4:00 P.M., 5 days per week, was abolished at the close of work April 28, 1955.

Carman Johnson on April 21, 1955, under the provision of the current agreement, made out a displacement slip, stating that he wished to displace Carman Rollin Ethier on his carmen's position, as of April 28, 1955, whose hours were 7:30 A.M. to 11:30 A.M.—12 Noon to 4:00 P.M.—5 days a week.

The carrier denied Carman Johnson the right to displace Carman Ethier and in order to protect himself, Johnson, under protest, was forced to displace a carman with assigned hours of 3:00 P.M. to 11:00 P.M.—5 days per week,

qualified in accordance with the provisions of the job as originally bulletined, and in accordance with the Bulletin Rule.

"In conference you attempted to offer evidence that there was an agreement between the parties that Mr. Ethier could be displaced. You failed to furnish any substantial evidence to support your position. Therefore, the Carrier will not allow Claimant Johnson to displace the present wreck crane engineer, in accordance with the foregoing." (Emphasis ours.)

The carrier respectfully submits that the claimant lost no money in that he immediately displaced another employe, one who had a position which Claimant Johnson was qualified to cover. Therefore, there can be no justification for any money settlement in this claim due to the fact that the man was not deprived of any remuneration.

CONCLUSION: The carrier submits that this claim should be denied for the following reasons:

1. Claimant not qualified to cover position.

2. Position bulletined properly in accordance with Bulletin Rules and became and has been a combination position for over 8 years.

3. Claimant was deprived of no remuneration—therefore, no justification for any money settlement or any claim.

4. The claimant is currently working a first trick position, and has been working a first trick position for some time.

5. Any decision contrary to the carrier's position would possibly subject the carrier to punitive rate for relief day coverage in that it would be necessary to use the regular man to cover his own relief, in that the present relief man's rest days would be identical to those of the regular wreck crane operator.

The carrier respectfully submits that this claim be denied in its entirety as supported by the foregoing.

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 employe 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.

The parties to this dispute were given due notice of hearing thereon.

On April 28, 1955, the carrier abolished a carman's position at East Deerfield, Mass., occupied by the Claimant Johnson, five days per week with daytime hours. Johnson undertook to exercise his seniority by displacing Ethier, a junior carman, who had the same hours, but the carrier refused to recognize the displacement and Johnson took a night job under protest.

In defending against the claim the carrier asserts that the position occupied by Ethier was that of a carman-wreck-crane engineer; that a wreck-crane engineer is required to hold a hoisting engineer's license under Massachusetts law; that Johnson was not so licensed, and that he was, therefore, ineligible.

The organization answers that the position of wreck-crane engineer at East Deerfield is carried on a separate seniority roster; that no such position as wreck-crane carman exists under the Agreement, and that the position occupied by Ethier was merely that of a carman and required no state license.

It appears from the Record that the position occupied by Ethier was bulletined as "Carman and wreck-crane Engineer", requiring a state license, on June 14, 1948, and was bid in by him accordingly on June 17th of that year. This situation stood without protest for nearly eight years and it cannot now be made the subject of challenge. There is no better established nor more wholesome rule for the proper application of an agreement than that the parties will be bound by the construction which they have mutually placed on it over a long period of time.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1957.