Award No. 3587

Docket No. 3120

2-PE-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 159, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

PACIFIC ELECTRIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That the carrier violated the current agreement when it refused to recognize the displacement rights of Carman Louis E. Brown and assign him to the position held by Carpenter Carl Peer.

(2) That the carrier be ordered to recognize the displacement rights of Carman Louis E. Brown and assign him to the position held by Carpenter Carl Peer.

(3) That the carrier be ordered to compensate Carman Louis E. Brown at the applicable rate of pay for all time lost including overtime as the result of its refusing to recognize his displacement rights.

EMPLOYES' STATEMENT OF FACTS: As the result of a coordination agreement between the Pacific Electric Railway Company, hereinafter referred to as the carrier, and the Southern Pacific (Pacific Lines), the position held by Carman Louis E. Brown, hereinafter referred to as the claimant, was abolished at the close of his shift March 2, 1958 by Bulletin posted February 13, 1958.

On February 15, 1958, claimant gave notice of his desire to displace Carpenter Carl Peer.

On the afternoon of February 17, 1958, Mr. O. H. Martin, asst. chief clerk, advised claimant by telephone that he would not be allowed to displace Carpenter Peer which resulted in the claimant being furloughed as of March 2, 1958.

The seniority roster of January 1958, insofar as it affects the claimant and Carpenter Peer, is as follows:

2. There has been no violation of collective agreement in that the claimant was not qualified to perform the duties required of the position upon which he attempted to displace.

3. The request of the claimant for compensation "at the applicable rate of pay for all time lost, including overtime" is not properly before the Second Division of the National Railroad Adjustment Board in that question of overtime payment has not been handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes. The request is so intangible, indeterminable and without foundation or precedent as to preclude any affirmative award, in whole or in part.

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.

Parties to said dispute were given due notice of hearing thereon.

The carrier coordinated certain facilities with the Southern Pacific, effective March 1, 1958, whereby 19 positions in the Mechanical Section of its Operating Department were abolished.

Claimant was employed by the carrier as a carman since 1922. His position of carman painter was abolished as a result of the coordination and he sought to exercise his seniority by displacing a junior carman carpenter. His request was refused on the ground that he was not qualified to operate a heavy duty crane in wrecking service to which work the junior carman was assigned as occasion required. Claimant maintains that the carrier's action in this instance was in violation of Rule 18 of the Carmen's Agreement.

The carrier questions this Board's jurisdiction on the ground that the dispute arose out of a coordination which was carried out pursuant to the provisions of the Washington Job Protection Agreement of May 21, 1936, and it maintains that the controversy must be determined only by the method provided in Section 13 of that Agreement. Section 13 of the Washington Job Protection Agreement established a method for final determination of a dispute or controversy arising in connection with a coordination, including an interpretation, application or enforcement of any of the provisions of the Agreement. Neither Section 13 nor any other provision of this Agreement purports to divest this Board of its jurisdiction to hear and determine a dispute between an employe and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions as established in Section 3, First (i) of the Railway Labor Act, as amended.

The instant dispute is predicated on alleged violation of the seniority rule of the effective agreement between the carrier and the employes' organization. The Washington Job Protection Agreement does not supersede the seniority rule. Its fundamental purpose is to provide allowances to employes affected by coordination. Section 13 refers to the mode of determining disputes arising "in connection with a particular coordination." A dispute arising in connection

with a coordination is not necessarily the same as a dispute based on an alleged violation of existing work rules on the property merely because such claimed violation occurred as a result of coordination. Rule 18 of the Carmen's Agreement deals with positions changed through reduction of force or abolishment without regard to the fact that such changes may be traced to a coordination plan or some other cause. Section 6(a) of the Washington Job Protection Agreement contemplates the preservation of seniority rights. We find the challenge to our jurisdiction in this case to be without merit.

That claimant was senior to the carman sought to be displaced and that he made timely request to exercise his contractual seniority rights is unquestioned. The sole issue presented under Rule 18 is therefore—did his qualifications entitle him to the position held by the junior carman? The carrier's position is that claimant's 35 years of service have been entirely devoted to car repair work and that his experience does not include emergency relief or wrecking service; and that as part of the duties performed by the junior carman included operation of a heavy duty crane in wrecking and emergency service, claimant did not satisfy the qualification requirement of Rule 18.

When claimant sought to displace the junior carman on March 1, 1958, there were 9 men assigned to relief and wrecking service, of whom 5 were qualified to operate the crane. The record shows that 4 carmen, who are members of the relief crew, had volunteered for such service subsequent to March 2, 1958, without prior experience in that type of work. It also appears that on at least two prior occasions in recent years that carmen without experience in crane operation were assigned to wrecking service and given on-the-job training. We think the carrier's explanation that its reduced personnel did not warrant it in making a similar assignment in claimant's case is inadequate in the circumstances and on the facts and circumstances shown of record we conclude that its refusal of claimant's request did not adequately satisfy the objective requirements of Rule 18. We find that claimant should be allowed to exercise his displacement rights and that he should be compensated for all time lost (not including overtime) as a result of the carrier's refusal to recognize his displacement rights less whatever benefits he may have realized under the Washington Job Protection Agreement and any earnings from other sources.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1960.