

Award No. 4680

Docket No. 4428

2-UP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the controlling agreement, particularly Rules 19 and 34 thereof, when they used Coach Cleaner V. Slipich as Passenger Car (Painter and Upholsterer) Foreman.

2. That, accordingly, the Carrier be ordered to pay Carman Painter C. J. Ferrera the difference between the regular mechanics rate of pay, which he received, and the pay which he would have received had he been properly assigned to this temporary vacancy of foreman.

EMPLOYEES' STATEMENT OF FACTS: Carman Painter C. J. Ferrera, hereinafter referred to as the claimant, is regularly employed as carman painter by the Union Pacific Railroad Company, hereinafter referred to as the carrier, at Los Angeles, California.

On September 11, 1961, Painter Upholsterer Foreman L. W. Hyfield was assigned to fill the vacation vacancy of assistant general car foreman, leaving his position as foreman temporarily while filling the assignment. The carrier chose to fill Mr. Hyfield's position of foreman and in doing so they used Coach Cleaner V. Slipich from September 11 to October 20, 1961 inclusive, as indicated by Mr. Neuhart's letter of February 20, 1962.

Mr. Slipich holds a coach cleaner's seniority date of September 28, 1939 and, also, a coach cleaner foreman's date of April 1, 1942. He has no seniority or experience as a mechanic whatever.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer of the carrier, all of whom have declined to make satisfactory adjustment.

The Agreement, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The foregoing indisputable facts establish,

RAILWAY BOARD OF ADJUSTMENT NO. 2
R. J. Turbull, Chairman.

Washington, D. C., August 2, 1920."

The record here indicates that Mr. V. Slipich, who was assigned to this passenger car foreman's position, then held and presently holds, a foreman's seniority date of April 1, 1942, on American railway supervisors' association seniority roster covering South Central District—Utah and California Division and accordingly was entitled by virtue of such seniority to be assigned to this position over any employe who did not hold seniority on this seniority roster. The organization was furnished a copy of this seniority roster during the handling on the property, and it is undisputed that Mr. Slipich does in fact hold Foreman's seniority date of April 1, 1942, as stated. Mr. C. J. Ferrera, in whose favor this claim was filed, does not hold a seniority date on this seniority roster.

Another factor requires a denial of this claim. Neither the organization nor the claimant has shown that Ferrera lost or suffered any damage or loss by reason of the carrier's action in utilizing Mr. Slipich. Ferrera was fully employed during the period in question. Further, the organization cannot argue that Ferrera was entitled to the foreman's job.

The claim should be denied.

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.

On September 11, 1961, Painter Upholsterer Foreman L. W. Hyfield was assigned to fill the vacation vacancy of Assistant General Car Foreman C. H. Roberts.

From September 11, 1961 to October 20, 1961, Coach Cleaner Foreman V. Slipich was used to fill Foreman Hyfield's vacated position. Mr. Slipich holds a Coach Cleaner's seniority date of September 28, 1939, and a Coach Cleaner Foreman's seniority date of April 1, 1942, but has no seniority or experience as a Mechanic.

The Organization contends that "the Carrier acted arbitrarily and without consideration of the available and qualified Mechanics when they used an inexperienced and unqualified employe to supervise mechanics". The Organization further contends that under Rule 34, which reads as follows:

"Foremanship FILLING TEMPORARILY

Should an employe be assigned temporarily to fill the position of a foreman, he will get the foreman's rate. Said position shall be filled only by mechanics of their respective craft in their department."

the Carrier was contractually obligated to use a mechanic to fill Foreman Hyfield's position.

The Carrier, on the other hand, contends that Rule 34 does not "provide that mechanics will be considered, preferred and utilized over those who have established seniority as Foremen". The Carrier considers Rule 19 as "essentially a policy statement that mechanics will be preferred over 'outsiders'".

Rule 34 starts with the word "Should" and introduces a conditional clause. The Second sentence of Rule 34, however, is not conditional as we shall demonstrate.

The subject of the first clause in sentence 1 is "employee", and in the second clause of sentence 1 the subject is "he" which, of course, refers to "employee". But in the second sentence of Rule 34, the subject is "Said position" and the verb shall which follows is used in a manner that establishes a mandatory procedure for that position. In other words, it is compulsory that if the Carrier fills a foreman's position temporarily, it must do so with a mechanic from the proper craft. There is no escape from this conclusion.

Much appears in the record about the intention of the Parties and even in the light of the plain and unambiguous language of that Rule—some interpretations have been given to us about the intent of the rule. It is not the "intent of the rule" that should be our concern but the semantic significance and interpretation of the language of that Rule, and this we firmly believe we have done correctly.

Accordingly, the Board rules in favor of the Organization.

AWARD

Claim 1—sustained.

Claim 2—sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.