

Award No. 4957

Docket No. 4836

2-PRR-MA-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the controlling agreements the Carrier unjustly deprived Mechanic Welder S. S. Schaberg, Fort Wayne, Indiana, Shops, from exercising his welders' seniority over and displacing a junior Mechanic Welder at the Fort Wayne, Indiana, East Car Shops on April 1, 1963.

(2) That accordingly the Carrier be ordered to compensate S. S. Schaberg for all monetary loss, i.e. eight (8) hours at the Mechanic Grade "E" straight time rate of pay for each work day retroactive to April 1, 1963, until placed on a Mechanic Welder's position.

(3) Further, that S. S. Schaberg, should be made whole for all vacation rights, and that the Carrier should be required to reimburse him for his Travelers' Hospital and Group Life Insurance premiums each month from April 1, 1963.

(4) That the Carrier be ordered to permit S. S. Schaberg to exercise his Mechanic Welders' seniority on any junior Mechanic Welder, at the Fort Wayne Shops, Indiana, in accordance with the Welders' Agreement dated July 28, 1941.

EMPLOYEES' STATEMENT OF FACTS: Mechanic Welder S. S. Schaberg, hereinafter referred to as the claimant, was regularly employed and assigned as a machinist welder, Fort Wayne Shops, Indiana. The claimant has a mechanic welder's (Double Asterisk) seniority date of November 15, 1921.

On March 28, 1963, a notice was posted in the Fort Wayne Shops, Indiana, of the Pennsylvania Railroad Company (hereinafter referred to as the

CONCLUSION

The carrier has shown that claimant had no right to displace Carman Manley on April 1, 1963, under any agreement or circumstance; that no rule of the applicable agreement provides for the penalty payment of eight hours as requested by the Employees in this dispute; that the claimant is entitled only to the monetary loss for the period involved; that he is not entitled to losses incurred by his own acts; and that the position of the carrier in this dispute is amply supported by previous awards of your Honorable Board.

Therefore, the carrier respectfully submits that the claim of the employees in this matter as presented to your Honorable Board 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 employee or employees involved in this dispute are respectively carrier and employee 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 claim is that the Carrier unjustly prevented machinist welder Schaberg, the Claimant, from exercising seniority over and displacing Manley, a junior carman welder, pursuant to the agreement of July 28, 1941, between the Carrier and the Brotherhood of Railroad Shop Crafts of America (BRSCA), which then represented all the shop crafts, including Machinists and Carmen. Prior to that date there had been a separate roster for welders, although some of them also held seniority in the regular crafts. By this 1941 agreement the separate welders' roster was abolished; welders with craft seniority were placed on their craft rosters with the highest seniority held by each, whether under craft or welder designation; those with no craft seniority were allocated to the various crafts by agreement and given craft seniority as of the dates of their welders' seniority.

Those with former craft seniority were designated on the new crafts lists with one asterisk; those without former craft seniority were identified with two asterisks. In accordance with this provision Claimant was given a double asterisk designation on the machinists seniority roster; and Manley a single asterisk designation on the carmen's roster.

Section 11(c) of the 1941 welders' agreement provided that those designated with one asterisk could not be displaced in reduction of force except by senior employees designated by either one or two asterisks "on any craft roster in their seniority district". Section 11(e) provided that employees designated by two asterisks could likewise be bumped only by senior employees designated by either one or two asterisks on any craft roster in the district. Thus the agreement recognized bumping across craft lines by employees with either a single or double asterisk designation.

Section 11(f) provides as follows:

"(f) Employees designated by two asterisks (**) will not be permitted to exercise their seniority by bidding or bumping to other than Welder positions in their craft or class."

On first analysis this would seem to mean that such employes could bump (1) only welders and (2) only in their own craft, despite Section 11(c)'s provision for bumping across craft lines.

However, to give effect to the well established rule of contractual interpretation that every provision of a contract must be given effect if at all possible, this Division in Award 3896 properly interpreted Section 11(f) as meaning that when exercising seniority in their own craft or class they could bump only to welder positions. Those designated by one asterisk were not thus limited.

We therefore hold, in accordance with Award 3896, that under the agreement of July 28, 1941, Claimant was entitled to displace carman welder Manley.

However, there are other complications. In 1945 the United Railroad Workers of America, C. I. O., since merged with the TWU, was certified to represent certain employes and in 1947 to represent the Carmen and all other crafts but the Machinists and Blacksmiths, whom in 1949 the Railway Employees' Department, A. F. L., was certified to represent.

An agreement, effective November 1, 1956, between the Carrier and the TWU, representing the Carmen and other crafts, declared the abrogation of the welders' agreement of July 28, 1941, and the elimination of the single and double asterisk designations from their seniority rosters. Consequently the Carrier, and the TWU, which intervened pursuant to third party notice, contend that under the latter agreement Claimant was not entitled to bump carman welder Manley.

The Claimant's contention that a three-party agreement cannot be abrogated by two of them unless it so provides, is met by the Carrier's answer that it was not a three party agreement, having been made by the Carrier with an organization representing all shopcraft employes. However the agreement was recognized and in effect adopted by the separate organizations which succeeded the BRSCA, so that it virtually became a three-party agreement; and even if it did not, contractual obligations cannot be impaired without the interested parties' consent. We therefore hold that Claimant's rights under the welders' agreement of July 28, 1941 were not abrogated by the agreement of November 1, 1956.

It follows that Claimant was unjustly prevented from exercising his welder's seniority over a junior mechanic welder and that Claim 1 must be sustained.

Claims 2 and 3 are that Claimant be compensated at his straight time rate until placed on a mechanic welder's position, made whole for vacation rights, and reimbursed for monthly Travelers' Hospital and Group Life Insurance premiums from April 1, 1963.

Rule 7-A-1(d) provides that upon exoneration in a discipline case, the claimant "shall be compensated for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned on the basis of his assigned working hours actually lost during the period."

But no rule has been cited or found specifying the basis of reimbursement in other than discipline cases. Claimant is therefore entitled to reimbursement for all losses proximately resulting from the violation of his rights, including earnings, vacation pay, and any hospital and group life insurance paid by him which would during his employment have been paid by the Carrier, less any earnings which he earned or could have earned. The record shows that Claimant could have exercised his seniority rights to any of ten laborers' positions, and that he was granted a disability annuity as of April 1, 1964. He is entitled to reimbursement for this intervening year, or so much thereof as he was physically fit for welder's service, less his actual earnings and earnings which he could have had under his laborers' seniority, if physically fit for such service.

Claim 4, that Claimant be permitted to exercise welders' seniority must be denied in view of his disability annuity status.

AWARD

Claims sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1966.