



Award No. 5547

Docket No. 5339

2-DM&IR-SM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 71, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Duluth, Missabe and Iron Range Railway Company at Proctor, Minnesota, violated the controlling agreement, when Sheet Metal Worker P. D. Lassonde was furloughed without being given five (5) working days notice.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate Sheet Metal Worker, P. D. Lassonde, eight (8) hours at the straight time rate of pay for each of the following dates: September 2, 3, 4, and 5, 1965, for said violation.

EMPLOYEES' STATEMENT OF FACTS: At Proctor, Minnesota and Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the Carrier, maintains their main roundhouse. Among other crafts, Sheet Metal Workers are employed and work in the roundhouse. Due to vacation assignments, the Carrier allows employees on duty to fill vacation vacancies and recall furloughed employees to fill the vacancies created by the on-duty employees filling vacation relief positions. Sheet Metal Workers L. F. Frederick and J. G. Irving were assigned to the vacation relief positions. Sheet Metal Workers P. D. Lassonde and M. Z. Einarson were recalled to service to fill the vacancies created due to L. F. Frederick and J. G. Irving working the vacation relief positions. On August 30, 1965 the Carrier posted a notice advising Sheet Metal Workers P. D. Lassonde and M. Z. Einarson that they would be furloughed after the close of their shift on Saturday, September 4, 1965. On August 31, 1965, the Carrier corrected their notice, and advised the aforementioned employees that the notice of August 30, 1965 should have read Sunday, September 5, 1965. Also on August 30, 1965 the Carrier posted another notice advising Sheet Metal Workers J. G. Irving and L. F. Frederick and Sheet Metal Worker Helper H. Johnson that their jobs as vacation relief workers would be abolished at the close of shift on Friday, September 3, 1965. (See attached Exhibits A, B and C.)

on the carrier an almost impossible, and certainly an impractical requirement, for carrier would then have to anticipate what each employee was going to do. We do not think such was either the intent, meaning or purpose of the language used."

There can be no question that the employee whose position is abolished is the employee who is affected until such time as he exercises displacement to a position held by a junior employee. Under the facts and circumstances involved in this case, the Employees have no basis for claim; therefore, the claim should be denied.

In conclusion, the Carrier has shown that:

1. There has been no violation of any rule of the controlling agreement.
2. The senior employees, when their positions are abolished, have the right upon completion of their workweek to displace a junior employee.
3. Item No. 2 has been a practice for many years.
4. The local chairman agreed that the manner in which employees were handled in the instant dispute was proper.
5. The instant case is the first presented against the Carrier, although senior employees have displaced junior employees under similar circumstances for many years.

The Carrier affirmatively states that all data herein submitted has been discussed with the Employees' representative, either in conference or by correspondence and is known or available to him.

For reasons set forth herein, Carrier respectfully requests that the claim of the Employees be denied in its entirety.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

The issues herein are whether or not Carrier violated the Agreement when Claimant was not permitted to work the 5 calendar days, after he was given notice of lay-off through reduction in forces, due to senior employees exercising their seniority, resulting in Claimant being bumped from his position, and whether or not Carrier violated the Agreement by permit-

ting a senior employe to bump a junior employe prior to the expiration of his work week.

The facts are that at Proctor, Minnesota, where Carrier maintains its main roundhouse, Carrier filled vacancies due to employes on vacation with employes already on assigned duty, and would recall furloughed employes to fill the vacancies thus created thereby. Sheet Metal Workers L. F. Frederick and J. G. Irving were assigned to vacation relief positions, and Claimant P. D. Lassonde and Sheet Metal Worker M. Z. Einarson were recalled to fill the positions left vacant by said employes Frederick and Irving. On August 31, 1965, Carrier posted layoff notices to Claimant and Employee Einarson, effective close of work, September 5, 1965, and abolished Employee Frederick's position, effective September 3, 1965. Employee Frederick, in exercising his seniority, displaced employee Einarson, effective September 4, 1965, and, in turn, employee Einarson exercised his seniority, and displaced Claimant effective September 2, 1965. The consequence of these moves was that Claimant worked only one day, August 30, 1965, resulting in this claim for pay for September 2, 3, 4 and 5, 1965.

The Organization contends that Carrier violated Rule 29 of the Agreement when it allowed employee Einarson to displace Claimant on his work days of September 2 and 3, 1965; that Rule 26 was violated by Carrier when it did not permit Claimant to work 5 more working days after giving him his termination notice of five (5) days.

Rule 29 reads as follows:

"RULE 29.

DISPLACING JUNIOR EMPLOYES

(a) The exercising of seniority to displace junior employes, which practice is usually termed 'rolling' or 'bumping', will not be permitted, except as provided for in Rule 26."

The pertinent parts of Rule 26 of the Agreement provides as follows:

"RULE 26.

REDUCTION AND RESTORATION OF FORCES

(a) * * * Not less than five calendar days' notice will be given to the employes to be laid off before the forces are reduced * * *

(b) * * * Employes exercising displacement rights will do so within five calendar days after being affected by force reduction or abolition of positions."

The Carrier's position is that Claimant was given the proper five days' furlough notice, but that the intervening displacements by senior employes caused Claimant not to be entitled to work the five days because of said displacement; that by past practice the senior employes have been permitted to displace junior employes at the expiration of their work week.

The first question to be determined is whether or not Carrier violated the Agreement when it permitted employee Einarson to displace Claimant

on September 2, 1965. The evidence is undisputed that senior Employee Frederick displaced Junior Employee Einarson, effective September 4, 1965, and, in turn, Einarson, senior to Claimant, displaced Claimant, however, on September 2, 1965, which was one of Einarson's rest days on his old job. Thus, there is no question that Einarson displaced Claimant prior to the effective date of Einarson's displacement by Frederick, namely, September 4, 1965. This is in violation of Rule 26 (b), which clearly states that displacement must be made within 5 calendar days "after" being, as in this instance, affected by force reduction. Therefore, if employee Einarson was unable to displace Claimant because of said Rule restriction until Einarson was affected by force reduction, namely, on September 4, 1965, thus Claimant was entitled to work on September 2 and 3, 1965. Carrier attempts to excuse this move on the ground that the local chairman has always concurred in this past practice. Evidence of custom and past practice may be shown only to indicate the proper interpretation of ambiguous contract language. However, Rule 26 (b) is clear and unambiguous in regard to the manner in which employees are required to exercise displacement and, therefore, past practice cannot be controlling in this instance.

Second, we must decide whether or not Claimant was entitled to work on September 4th and 5th, 1965. There is no question that under Rule 26 (b) Employee Einarson had the right to displace Claimant on September 4, 1965, the effective date he was displaced by Senior Employee Frederick. Therefore, the question remains does Rule 26 (a) guarantee to Claimant that he is entitled to work five days after said 5-day notice is given to him that he is being laid off by Carrier. If so, then Claimant is entitled to pay for September 4 and 5, 1965.

This Board was confronted with a similar problem in Award No. 4089 (Johnson). The factual situation in that Award dealt with a 7-day notice, rather than a 5-day notice as in this dispute, in regard to Employees affected by reduction of forces. The Board in said Award No. 4089 concluded that the notice is not required for employees bumped, and that senior employees are not required to delay exercising their seniority rights until the notice provision time has expired. We concur in this reasoning, and find that Claimant in this instance was not entitled to the full five calendar day notice, inasmuch as he was bumped by senior employee Einarson, which should have been effective September 4, 1965, precluding Claimant from receiving pay for said September 4 and 5, 1965.

Therefore, it is the conclusion of this Board that Carrier violated this Agreement when it permitted employee Einarson to bump Claimant prior to September 4, 1965, and, therefore, Claimant is entitled to 8 hours' pro rata pay for September 2 and 3, 1965, but his claim for pay September 4 and 5, 1965, is denied.

AWARD

Claim partly sustained and partly denied, in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October, 1968.

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