

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6603
Docket No. 6476
2-LV-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 96, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(J. F. Nash and R. C. Haldeman, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

Dispute: Claim of Employees:

That the Carrier violated the provisions of the August 29, 1944 Upgrading Agreement and Rule 29 of the Controlling Agreement when they refused to allow Journeymen Carmen Alvaro G. Ciardi and Richard Vienna to displace and take Carmen positions temporarily filled by set-up Carman Helpers at Sayre, Pa.

That accordingly the Carrier be ordered to compensate the above named Carmen at the applicable Carmen rate of pay for all days starting with April 20, 1972 for not being allowed to work Carmen positions at Sayre, Pa. that are being temporarily filled by set-up helpers.

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 waived right of appearance at hearing thereon.

Claimants were furloughed Carmen from the Manchester, New York seniority point, having been furloughed in July and October 1971. On April 12 and 27, 1972, Claimants requested to displace upgraded Carmen (promoted helpers) at Sayre, Pennsylvania, another seniority point. Carrier refused this request.

Petitioner bases its position on an alleged violation by Carrier of Rule 29 of the Agreement and also of the Memorandum of Agreement of August 29, 1944 and the interpretation and practice of the latter agreement. Rule 29 provides:

"While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern."

The Memorandum of Agreement of August 1944 provided:

"MEMORANDUM OF AGREEMENT COVERING SENIORITY
STATUS OF EMPLOYES IN THE MECHANICAL CRAFTS
WHO HAVE BEEN PROMOTED TO MECHANICS FROM
APPRENTICES, HELPERS AND COACH CLEANERS.

1. Helpers in any craft promoted to mechanic's position prior to January 1, 1940, will be placed on the mechanics' seniority roster as the date they were first promoted to mechanics.
2. Apprentices who have not finished their apprenticeship and who have been advanced to perform mechanical work will be given their seniority as mechanics from the date of advancement, upon the completion of their four (4) years apprenticeship.
3. Apprentices advanced to mechanics before the completion of their training course must keep up currently the lessons required of them in accordance with the rules governing apprentices.
4. Helpers in any craft promoted to mechanics positions subsequent to January 1, 1940, will be placed on a desk seniority roster as of the date they were promoted; but this will not effect their helper's seniority date; they to be carried on the regular helper's roster as of their original date.
5. On account of the necessity to temporarily advance apprentices and helpers to mechanics' positions it is agreed that the following procedure will be followed in making such advancements.
6. Regular Apprentices, who have served three (3) years or more of their apprenticeship, will be advanced first.
7. Helper Apprentices, who have served two (2) years or more of their apprenticeship, will be advanced next.
8. Regular Apprentices, who have served two (2) years or more of their apprenticeship, and Helper Apprentices, who have served one (1) year or more of their apprenticeship, will be advanced next.

- "9. Qualified Helpers having two (2) years or more experience as mechanics, or as helpers, will be advanced next.
10. Local Management and Local Committees will mutually agree on the employees to be advanced and demoted, subject to appeal to the General Chairman and the General Management.
11. Question of disposition of helpers promoted to mechanics in any craft, subsequent to January 1, 1940, will be disposed of between the General Committee and the Management at the expiration of the present emergency.
12. This Memorandum of Agreement supersedes all previous Memorandums or Interpretations thereto, covering the promotion of apprentices and helpers."

The record also indicates that the 1944 Agreement had been interpreted in 1948 to mean that Carrier could promote helpers until mechanics were available through apprenticeship training programs or through other sources. Petitioner also argues repeatedly that it had been a long established practice of Carrier, in accordance with the 1944 Agreement, to permit furloughed Carmen to claim positions at another seniority point that were temporarily filled by set-up helpers.

Carrier contends that Rule 29 gives furloughed Carmen the right to transfer, not to displace, employees at another seniority point. Carrier states that this position is reinforced by the provisions of Rule 31 which confines seniority to the point employed. Further Carrier argues that the 1944 Agreement contains no provisions for permitting furloughed employees to displace at another seniority point. Carrier also denies the practice of permitting displacement as claimed by the Organization.

Rule 29 and the 1944 Agreement do not in their clear language provide for the displacement of set-up helpers at another seniority point by Carmen. For Petitioner's interpretation to prevail then, the consistent past practice must be demonstrated. The record contains repeated allusions to such practice but not even one instance of such displacement in the twenty-eight year period. Since reiteration of argument is not a substitute for probative evidence, we must reject Petitioner's position.

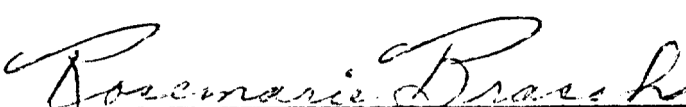
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1973.