

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That furloughed Machinist, John Linville was denied his right of recall to the Barboursville Reclamation Plant on February 27, 1974.
2. That accordingly, Machinist John Linville **should be compensated** at the pro rata rate of pay for each day a junior employe worked while Machinist John Linville remained in furlough status.

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.

On February 27, 1974, Carrier issued Bulletin No. 3740, advertising a Temporary Welder's position. On March 4, 1974, Bulletin No. 3740(a) awarded the position to V. L. Bledsoe. Bledsoe was on furlough status at the Barboursville Reclamation Plant, as was the Claimant, who was senior to Bledsoe.

The Organization asserts a violation of Rules 27(c) and (d):

"Agreement rule No. 27(c) reads as follows:

In the restoration of forces, senior laid off employes will be recalled and will notify the recalling officer in writing, within 10 days of receipt of notice of his intention to return. Those failing to notify of their intention to return as provided herein or failing to return within a reasonable time will forfeit their seniority on the roster on which recalled."

"Agreement rule No. 27(d) reads as follows:

The local committee will be furnished a list of men to be restored to service."

The record contains vigorous arguments and contentions by the parties concerning the "temporary" nature of the vacancy, the need for a welder's certificate in order to perform welder's work, the need to rearrange forces to accommodate to seniority, etc., but we do not feel that it is necessary to explore all of the various concepts advanced in order to dispose of this dispute.

This Board is, of course, limited to a consideration of "facts" as developed on the property, and may not consider factual allegations advanced for the first time in Submissions and Rebuttals.

On the property, the Employees clearly asserted that Bledsoe had submitted a bid although he had not been recalled under Rule 27. Further, they stated that Bledsoe had not been mailed a recall notice, but that someone above the rank of journeyman had telephoned Bledsoe concerning submission of a bid. A notice of the vacancy was not mailed to Claimant. While references are made, in later prepared documents, to possible means of distribution of information, the Carrier did not dispute the above-recited assertions on the property.

In its Submission, Carrier insists that in order to qualify as a Machinist-Welder in the Maintenance of Way Department, an employee must successfully pass welding tests.

"Claimant], however was not a certified Welder. It was for this reason that he was not recalled and awarded the position of Machinist-Welder." (Page 2, Carrier's Submission)

Further:

"Rule 27(c) does state that 'In the restoration of forces senior laid off employee will be recalled...' but obviously, the senior, laid off employee must possess the qualifications to properly perform the job." (Page 5, Carrier's Submission)

For purposes of this discussion, we will assume, without deciding, that in fact a welder's certificate was required for the position in question, and we concede that, as noted in Awards cited by Carrier, in its managerial discretion a Carrier has the right to determine an employee's ability (absent contrary contractual proscription) and assess competence. See, for example, Awards 6826 and 6578.

Rule 27(c) states that, in "... restoration of forces, senior laid off employees will be recalled..." If, under our assumption as stated above, the individual to be assigned to the vacancy had to be qualified as Carrier asserts), we would require a more specific showing of qualification between the employees than is present here.

The vacancy was posted on February 27, 1974 and awarded on March 4, 1974. Yet, the document described by Carrier as the "Welding Certificate Information Sheet from which his [Bledsoe's] certificate was prepared..." shows that Bledsoe was not certified by the Welding Supervisor until March 1, 1974.

Surely then, there was no clearcut qualification determination of the junior employee until the very time of the filling of the vacancy. Because Rule 27(c) clearly prefers the recall of senior employees, under the facts of this record, that rule required some consideration to allowing the Claimant the capability of demonstrating his qualifications. We find no evidence that Carrier made any effort in that regard.

We stress, of course, that this determination is made based solely upon the considerations of this record.

The record indicates that the position in question was abolished as of November 12, 1974, and that date shall control the duration of the claim.

A W A R D

Claim sustained, as noted in the Findings, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.