

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (United Steelworkers of America, AFL-CIO
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(The Lake Terminal Railroad Company

Dispute: Claim of Employees:

Did the Carrier violate the agreement between the parties when on November 29, 1976 it permitted extra foreman B. Vujosevic to displace handyman-welder D. Rice?

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.

B. Vujosevic was promoted in June 1972 by the Carrier from a bargaining unit position of Handyman-Welder to a position outside the bargaining unit as Extra Foreman. On November 29, 1976, his Extra Foreman position was abolished, and he was permitted to exercise his seniority in the bargaining unit by displacing a junior employee from the Handyman-Welder position. It is this displacement action which the Organization is contesting.

The pertinent provisions of the Agreement are as follows:

"RULE 32

Promotion to Foreman

Employees promoted to positions as foreman will retain their seniority on the seniority lists."

"RULE 6

Seniority

....

(c) The principle of seniority will operate only in case of promotions, vacancies, furloughs and newly created jobs or positions, and in the choice of vacation periods.

....

(g) The exercising of seniority to displace junior employees, which practice is usually termed "rolling" or "bumping", will not be permitted, except in cases where the employee's job is abolished or another employee is displaced from his job due to abolishment of a job other than his own."

The Organization argues that the use of the word "only" in Rule 6(c) indicates that situations such as involved herein are not covered by seniority rights. The Carrier argues that Rule 32 and the entire context of Rule 6 sanction the action taken by the Extra Foreman in displacing a junior bargaining unit employee upon the abolishment of his job.

Rule 32 has meaning and purpose given to it by the parties who created it. If an employee promoted to Foreman could not, under specific circumstances, exercise his seniority at all, the rule would become a nullity. The specific circumstances involved here are covered by Rule 6(g), permitting the exercise of seniority (granted under Rule 32) when the employee's job is abolished. There was no dispute raised that Vujosevic's position as Extra Foreman was abolished.

As to the Organization's reliance on Rule 6(c), the established principle applies here that where rules are in conflict with each other, a special rule, Rule 6(c) prevails. See Award No. 3918 (Daugherty) and Award No. 4103 (Anrod).

No showing has been made that the procedure followed here is at variance with instances of past application of the same rules.

A W A R D

Claim denied.


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Award No. 7689
Docket No. 7620
2-IT-USWA-'78

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Branch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1978.