

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the provisions of the current Memorandum of Agreement between St. Louis-San Francisco Railway Company and the Brotherhood Railway Carmen of the United States and Canada, effective July 1, 1977.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Carman Apprentice Carl A. Chatman the monetary difference of Carman Apprentice's hourly rate as compared to Journeyman Carman's rate for the days of December 21, 1977 through January 7, 1978, January 23, 1978 through February 3, 1978, March 11th, 12th and 17th, 1978, and full Journeyman rate of pay for any days Carl A. Chatman not so working while an apprentice, and all continuing time not promoted ahead of junior employees.

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.

Claimant is an apprentice carman on carrier's repair track at Birmingham, Alabama. On a number of occasions in December 1977 and in January, February, and March 1978, carrier set up apprentices to fill carmen positions on a temporary basis when journeymen carmen were not available for work. On the dates cited in this claim, petitioner alleges that less senior apprentices than claimant were used as journeymen and paid the rate. Petitioner alleges that claimant should not have been bypassed for these assignments. Using less senior employes in these instances is a violation of the July 1, 1977, Memorandum of Agreement.

The July 1, 1977, Agreement reads in pertinent part as follows:

"Section 6. (a) The practice of upgrading carmen helpers is discontinued. In the event of not being able to employ

"journeyman mechanics of the carman's craft or carmen with three years experience, the force may be increased by promoting the senior qualified apprentice."

Petitioner argues that Section 6 (a) of the agreement is clear and unambiguous. It states that in the event that journeyman mechanics in the carman's craft or carmen with three years experience cannot be employed, the force may be increased by promoting the senior qualified apprentice. Claimant was more senior than apprentices promoted on the dates cited in the claim. He therefore should be paid the differential between the apprentice rate and the journeyman rate on those days.

Carrier does not agree that Article 6 (a) applies to the instant case. Instead it relies on Article 6 (e), wherein it is stated: "A list of temporary carmen shall be prepared and maintained at each seniority point of those apprentices promoted to mechanics as set forth in paragraph (9) hereof." Article 6 (e) also states that "When the force is reduced the junior temporary carman will be set back first."

Carrier is arguing that temporary carmen positions are protected from the temporary carman list required to be prepared and maintained by Article 6 (e) cited above. Carrier argues that while the two apprentices who were promoted to temporary carmen were less senior than claimant on the apprentice list, they were more senior to him on the temporary carman's list (since they had worked as temporary carmen prior to this claim date and claimant had not). Therefore, the apprentices had a right to fill the temporary carman positions they were promoted to.

Petitioner claims that the temporary carman positions should be filled by setting up the most senior apprentice. Carrier claims that they should be filled by setting up the most senior temporary carman not working in that capacity, and that if all are working, the most senior apprentice should be set up.

A careful review of the record and application of universally accepted principles of contract interpretation requires that the organization's position be upheld in this case.

Section 6 (a) of the Memorandum of Agreement clearly states that when the force is increased (as was done in the instant case), the most senior apprentice shall be promoted. Nowhere in the agreement does it state or even imply that temporary carman positions should be viewed as other than promotions, and that these positions will be protected from a temporary carman list. The parties agreed in the memorandum that promotions are made by setting up the most senior apprentice. They have also agreed in Section (3) that when the force is reduced, the junior temporary carman will be set back first. They have made arrangements for promotion from one list and demotion from another. The parties have failed to reduce to writing the interpretation carrier would have this board give to the Memorandum of Agreement. Had the parties intended that temporary carman positions were to be protected from a temporary carman list, they could have very easily so stated. Absent such a statement, this board is required to apply the language of Article 6 (a) and 6 (e) of the memorandum literally.

Claimant was more senior than those employees cited in his claim as having been promoted. Article 6 (a) requires that claimant should have received the promotion. We therefore must sustain the claim for the days specifically cited in the claim. We see no basis on which to consider the claim as a continuing one and deny that portion of petitioner's plea.

A W A R D

The claim is sustained for the specific days cited in the organization's ex parte submission.

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 18th day of February, 1981.