

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8783
Docket No. 8518
2-CRR-CM-'81

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Clinchfield Railroad Company

Dispute: Claim of Employees:

1. That the Clinchfield Railroad Company violated the terms of the current controlling agreement when they refused to allow furloughed four-year Carman K. E. McInturff, Erwin, Tennessee, to displace an Upgraded Carman Regular Apprentice who had been transferred to Bostic Yard, N.C., and upgraded to Carman following his furlough from Erwin, Tennessee.
2. That accordingly, the Clinchfield Railroad Company be ordered to extend furloughed Carman K. E. McInturff his contractual right to displace the Upgraded Carman, and to compensate him eight (8) hours' pay at straight time rate for each shift which the Upgraded Carman has worked retroactive to June 27, 1978.
3. That the Clinchfield Railroad Company be further ordered to make furlough Carman K. E. McInturff whole with respect all rights, privileges and benefits associated with his railroad employment, such as, but not limited to, vacation, health and welfare, and insurance benefits.

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 were given due notice of hearing thereon.

At issue here is the right of a furloughed four-year Carman, Claimant K. E. McInturff employed at Erwin, Tennessee, to displace an Upgraded Carman Apprentice, T. H. Hensley, at Bostic Yard, North Carolina, a separate seniority point in the Carrier's system. Sharpening the nature of the dispute is the fact that Hensley also held seniority at Erwin and was originally transferred to Bostic Yard as an Apprentice.

The claim can be found without separate standing in that virtually identical claims dated December 29, 1973; December 31, 1973 (same Claimant as here); and November 21, 1975 were filed and were denied by the Carrier without being brought

to the Board for resolution. In addition, a virtually identical claim was filed by the same claimant as in the November 21, 1975 claim. This claim became the basis of recently issued Award No. 8554 (Wildman), in which the Board denied the claim.

The Carrier argues that a furloughed Carman has no displacement rights at points other than where he holds seniority. Rule 17 states in part:

"Seniority of employees in each craft covered by this Agreement shall be confined to the point employed..."

The Organization in the alternative points to Article III of the National Agreement dated June 4, 1953 which states in part:

"In the event of not being able to employ Carman with four years experience who are of good moral character and habits, regular and helper apprentices will be advanced to Carman in accordance with their seniority ... however, they will not be retained in service as Carman when four-year Carman as described above become available."

In addition, the Organization notes several instances -- dating back some years -- in which it alleges that the Carrier permitted displacement by a four-year Carman at a point other than which he held seniority.

While Article III would appear to leave broad application in the use of four-year Carman over apprentices, it does not deal with seniority as such but rather the rights of four-year Carman "able" to be employed or who "become available". This general rule, however, does not negate the clear and specific terms of Rule 17 between this Carrier and the Organization, occasional and dated practice to the contract notwithstanding. In this instance the Claimant, furloughed in 1973, made a claim five years later to displace an employee who had been transferred to Bostic Yard and upgraded there in 1975. Even if the Organization had shown some irregularity in Hensley's transfer and upgrading (which it has not), there is no showing that the Claimant here would be the appropriate "available" four-year Carman to displace Hensley.

The Board echoes the language of Award No. 8554 which states:

"Any exception to the unambiguous and sweeping pronouncement of Rule 17 would have to be found to have been clearly the intention of the parties as evidenced by some precise and specific language in the agreement; in our judgment, Article III does not meet such a standard."

A W A R D

Claim denied.

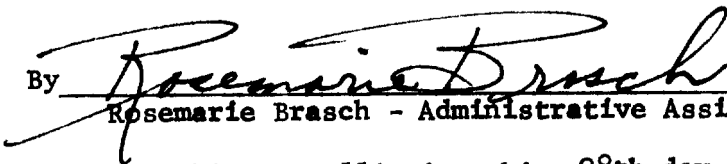
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.