

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Carrier has taken the position the operation of a geometry car does not fall under the Machinist Classification of Work, and gave Machinist P. W. Laughlin a leave-of-absence to fill such a position in violation of the controlling Agreement effective April 15, 1967, as amended.
2. That, accordingly, Machinist P. W. Laughlin's name be removed from the System Maintenance of Way Seniority Roster Effective January 1, 1979.

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.

The record indicates that the claimant was employed on July 2, 1974 as a new employee and entered the service of the Carrier as an Apprentice Machinist. On February 17, 1976, Mr. Laughlin was assigned as a set up Apprentice Machinist in accordance with Vacancy Bulletin No. 16. On May 1, 1978, he assumed the position of Track Geometry Car Operator. Effective March 1, 1979, he was promoted to Assistant Supervisor, and from May 1, 1978 through the present time, Mr. Laughlin has been on leave of absence.

Machinist P. W. Laughlin holds seniority date of January 1, 1978 with Southern Pacific Transportation Company (Texas and Louisiana Lines) in their System Maintenance of Way Repair Shop at Houston, Texas.

On May 1, 1978, Machinist Laughlin was assigned to position No. 876, Track Geometry Car Operator. Due to that assignment, Carrier was requested to remove Machinist Laughlin from the 1979 Seniority Roster, by letter dated December 31, 1978, from Local Chairman M. R. Byer.

On July 13 and October 11, 1978, Machinists' General Chairman Hixon protested the inclusion of Mr. Laughlin's name on the Seniority Roster of Machinists. On April 2, 1979, the General Chairman again protested the seniority of Mr. Laughlin as a Machinist, alleging Geometry Car Work did not come under the scope of the Machinists' Agreement.

The Organization contends violation of the Rules governing Leave of Absence (Rule 18) which sets forth:

"Unlimited leave of absence will be granted in case of sickness or in case of official promotion, either with the Company or with the Organization.

When the requirements of the service will permit, employees, on request, will be granted leave of absence for a limited time with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority unless special provision shall have been made therefor by the Manager of Personnel and General Chairman representing his craft.  
(emphasis added)

The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failures to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under this agreement."

The Organization contends Mr. Laughlin, for over a five month period had been assigned as an operator and it is the Machinist Organization's position "that if the operator's classification on the Geometry Car does not fall under the Machinist Classification ... Mr. Laughlin would have been gainfully employed in another classification, if that is to be the determination and therefore is not entitled to a leave of absence without the permission of the General Chairman under the applicable portion of the Agreement in that he was not on a (an) excepted position as covered under the controlling Agreement."

The Organization argues that an individual assigned a position as a Track Geometry Car Operator, is not entitled to the protection of their seniority in their former craft, anymore so than one would, if they became employed as a Fireman, Engineer, or any of the numerous crafts in the industry under the Carrier's jurisdiction.

The Carrier raises as a defense the contentions that Rule 16 of the applicable Agreement deals with promotions and provides that "men assigned to special duties outside the scope of this Agreement, shall retain their seniority in their craft ...". It is the Carrier's position that Mr. Laughlin is fully qualified for the protections of this provision.

On May 1, 1978, Mr. Paul Wesley Laughlin was promoted to Position No. 876, Track Geometry Car Operator. Form C.S. 2350, Change in Employees, which reflects this promotion, was furnished and copy was attached to the submission as Carrier's Exhibit "C", as well as copy of Form 2120 of April 25, 1978.

Effective March 1, 1979, Mr. Laughlin was again promoted to position of Assistant Supervisor, and copy of Form 2120, which verified such appointment to an excepted position, was also furnished.

On the basis of such proof of official promotion, the Carrier asserts that Rule 18 supports Carrier's position that Mr. Laughlin was on a bona fide leave of absence, inasmuch as that rule provides that:

"Unlimited leave of absence will be granted in case of  
... official promotion, either with the Company or with  
the Organization."

There is nothing in the rules of the applicable Agreement that prevents an employe from seeking and accepting an appointment or promotion, although the privilege of such appointment is left to the Carrier.

Briefly stated, the case at issue contains these two conflicting positions:

1. Organization contends that the major portion of duties of Mr. Paul W. Laughlin assigned as Operator on Company Geometry Car is not covered under the Scope of the Agreement and that, accordingly, his name should be removed from the Seniority Roster.

whereas, the Carrier maintains that:

2. Mr. Paul W. Laughlin was on a bona fide leave of absence following promotions, his last promotion being of a supervisory nature (excepted position), and further, that so long as he retains such excepted position, he also retains his seniority rights.

The basic question before the Board in this dispute is whether or not the change from Machinist to Geometry Car Operator constitutes a break in Mr. Laughlin's continuity of service within the meanings of Rule 18 (Leaves of Absence), Rule 28 (Seniority), and Rule 16 (Promotion to Foreman).

Central to the answer to that question is whether the Geometry Car Operator's position constitutes employment outside of the Machinist Classification or is, in fact, a bona fide official promotional position entitled to "unlimited leave of absence".

A careful reading of the record indicates that Mr. Laughlin's rate of compensation increased when he changed from Machinist to Geometry Car Operator in 1978, and also when he became Assistant Supervisor in 1979. The Carrier submitted payroll records and appointment forms which support its assertion that each of Mr. Laughlin's changes in positions were promotions with the Company. The Organization, while noting that the Geometry Car Operator position was "outside of the Machinists Classification" failed to demonstrate that the change was not a promotion.

Absent any proof or evidence to the contrary, the Board finds that since Mr. Laughlin's Geometry Car Operator's position was promotional, he was entitled to "unlimited leave of absence" under Rule 18, and retains his seniority in his "craft and/or class at the point where held at the time of promotion" under Rule 16. And we so find here.

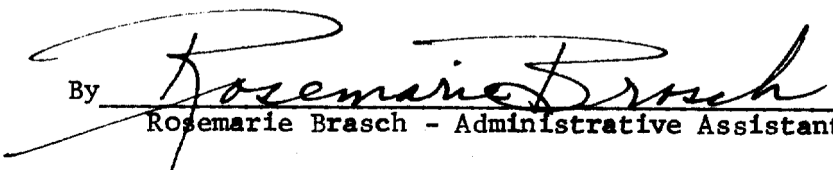
A W A R D

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 10th day of November, 1981.