

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That the Belt Railway Company of Chicago violated the current working Agreement when they arbitrarily and unjustly demoted (disciplined) Temporary Carmen D. Woodrich, G. Elders, M. Sage, W. Kelly and T. Earnest. Said action by the Railroad management is in violation of Rules 20, 21 and all of the promotional and upgrading Agreements in effect between the Railway Company and the Organization.
2. That The Belt Railway Company of Chicago be ordered to reinstate the above named employes as Temporary Carmen according to their seniority and that they be compensated the exact amount of their losses, or any and all wage losses sustained, plus interest at the current rate on the amount of reparations due, until such time as they are reinstated according to their seniority.

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.

This case arises from the demotion of five Claimants to Carmen Helpers, by separate letters each dated April 2, 1980. The Claimants had been temporarily advanced from the Carmen-Helper work classification to work in the higher job classification of Carman-Mechanic. As upgraded mechanics, they each had to work four (4) years in the upgraded status (950 days) to become qualified as a Carman-Mechanic and establish a seniority date as such. The Claimants were advanced to work as "Temporary" Carmen as follows:

Helper D. Woodrich advanced 11/13/78
Helper G. Elders advanced 2/2/79
Helper M. Sage advanced 10/9/79
Helper W. Kelly advanced 1/29/79
Helper T. Earnest advanced 5/19/79

As noted in the Carrier's submission to this Board the Carrier conceded that the Claimants had performed work assignments satisfactorily and were progressing as Carmen through the end of 1979. However, according to the Carrier, various car foremen during the first three months of 1980 reported having to admonish Claimants for not completing work assignments, whereby the next shift had to complete the work. Subsequently, according to the Carrier, their work performance did not improve and written reports were made to the Superintendent, Car Department, indicating that the Claimants were not willing to accept the responsibilities as Carmen and that there was a definite lack of interest to learn additional functions. As a result thereof, Mr. J. D. Mowery, Superintendent Car Department, notified each of the Claimants in the above-noted April 2, 1980 letter that they were being set back to Carmen-Helpers effective 11:59 p.m., Sunday, April 6, 1980.

Carrier contended that its actions certainly do not constitute discipline under the Controlling Agreement. It is the Carrier's position that under the applicable Management Rights Clause of the controlling Agreement, the Carrier had a clear right and obligation to control the work force. The Carrier asserted that absent any rule to prevent demotion, it is clearly entitled to demote if supervision feels the work performance is not satisfactory. According to Carrier Exhibits "3" and "4", the determination as to the efficiency, productivity and capability to remain in the upgraded status for each Claimant was the sole prerogative of Management. In each particular case, at least one foreman indicated the demonstrated lack of responsibility and job knowledge on each Claimant's part. Therefore, in accordance with Management's prerogatives, each Claimant was set back to a Helper to receive more training, increase their knowledge of Car Inspector's duties, and as an impetus to reform their work attitudes and habits.

The record reveals that the Carrier reinstated each of the Claimants to the upgraded status on the following dates:

D. Woodrich	- 5/01/80
T. Earnest	- 5/18/80
G. Elders	- 7/03/80
W. Kelley	- 9/01/80
M. Sage	- 9/01/80

Last, Carrier argued that a review of the record evidence in the instant case shows a failure to comply with the procedural requirements of Rule 20 in situations where unjust treatment is alleged, separate from the more common disciplinary context. Carrier's Exhibit "3" shows that the Claimants were informed and had knowledge of how to proceed in this situation and here failed so to do.

In the main, the Claimants and the Organization argue that the instant matter was really a disciplinary action cast by the Carrier as a demotion in violation of the intent and meaning of Agreement Rule 20. To the Organization, on the one hand, the Carrier says no disciplinary charges were made; yet, on the other hand, the Carrier accuses the Claimants of being inefficient, unproductive, unskilled and unable to perform the duties of a Carman. Claimants were, as a result of the above charges made by their respective foremen, found guilty and

stripped of their rate of pay, and forced into a lesser paying job, all without the benefit of a hearing as contemplated by Agreement Rule 20. Further, the Organization and each Claimant asserts that the work assignments actually given between the demotions and the reinstatement of each of the Claimants to the upgraded status were such duties as picking up scrap and other menial tasks which surely do not result, nor could result, in each Claimant learning better work skills or obtaining expanded knowledge in the fundamentals of the trade. The record thus shows, on the merits, that no matter how cast, the effect and real purpose of the Carrier's actions were, under these circumstances, to impose discipline in contravention of the Controlling Agreement's Rule 20, the Organization stressed.

Any fair-minded reading of the record evidence in the instant case would show that a central aspect constituting both the impetus and motive in the Carrier's course of action were the charges by each Claimant's immediate foreman that the Claimants were being inefficient, unproductive, unskilled and unable to perform the duties of a Carman-Mechanic during the initial three months of 1980. These charges, and Management's response, constituted in effect an imposition of discipline and not a demotion for lack of skill or consistent poor work performance. Demotion under these circumstances is an abuse of managerial discretion and a violation of the relevant rules of the Controlling Agreement especially Rule 20. Therefore, on the merits, the Board sustains the instant claim.

Based on the posture of this record, we need not and therefore do not reach the question of whether there may have been some procedural question, since the real thrust and purport of its actions were disciplinary. Thus, the separate procedure for hearing when unjust treatment is alleged, separate and apart from disciplinary actions under Rule 20, does not apply. Further, the Organization requested "interest" in its appeal of this claim at the current rate. The record reveals that there is no provision in the working agreement for interest on claims. This Board has consistently held that it cannot afford Claimants that which is not provided for by the express terms of this Agreement. Therefore, we reject this portion of the claim. Each Claimant is awarded the difference between the rates of pay of the Carman-Helper and the Carman-Mechanic for the time demoted.

A W A R D

Claim sustained as set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.