

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

Dispute: Claim of Employees:

- (1) The instant time claim is instituted in behalf of employee Colby Mansell whose seniority rights under the controlling agreement, specifically rule 6(d), have been irrationally and unjustly violated when you refused to permit him to displace a new employee on May 20, 1981.

Rule 6(d) clearly and unambiguously states:

"In the event a new employee is hired or a man is promoted to a craft in the Car Repair Department, a senior employee may exercise his seniority to displace him within five days."

On Monday, May 18, 1981 you told Mr. Mansell that he could not displace a new employee because he (the new employee) "was not in the union."

On Wednesday, May 20, 1981 you would not allow Mr. Mansell to displace a new employee because you "were under orders from the front office to keep the new employees on the day turn shift." Since you have cited no contractual basis for the erroneous and ridiculous reasons given for this carrier's actions as noted above, it becomes quite clear that this case is a continuity of the carrier's assault on the agreement in order to achieve a union-free environment for its summer employees. This arbitrary, unilateral and arrogant attack was initiated in Case CD-3-80, and evidently the carrier feels it must reinforce its position in that case by running roughshod over any part of the agreement that does not align with their decision in CD-3-80.

Incidentally, the Organization would appreciate your notifying us of the identities of the person or persons in the "front office" who are responsible for your decision.

- (2) It is requested that beginning with May 20, 1981, and continuing for every workday until this situation is resolved, the carrier compensate Mr. Mansell eight (8) hours pay at the helper's rate as penalty for this presumptuous and dispicable disregard for Mr. Mansell's seniority rights, in addition to all other earnings.
- (3) Further, it is requested that the carrier compensate Mr. Mansell an additional sixty-five dollars (\$65.00) for every fourth Saturday and sixty-five dollars (\$65.00) for every fourth Sunday of each month, beginning with May 23 and 24, 1981. This request is based on the wage loss Mr. Mansell suffers by not being able to serve with the U.S. Coast Guard Reserve on the days noted due to the instant violation.

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 employes 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 Organization contends that Carrier violated Rule 6(d) of the controlling Agreement when it did not permit Claimant to displace a new employe who was scheduled to work as a helper. The new employe was hired less than five (5) days prior to Claimant's May 20, 1982 displacement request. Rule 6(d) which is in contention herein is referenced as follows:

"In the event a new employee is hired or a man is promoted to a craft in the Car Department, a senior employee may exercise his seniority to displace him within five days."

In defense of its petition, the Organization argues that the clear language of this provision requires that a senior employe may exercise his seniority to displace a newly hired employe in the Car Repair Department. It avers that this interpretation application has been consistently observed on the property.

Carrier contends that the aforesaid provision was not intended to apply to a situation whereby a new employe is hired as a helper, but instead was purposely developed to apply to situations whereby a person is hired either directly into a craft position or alternatively whereby an existing employe is promoted to a craft position in the Car Repair Department. It argues that this rule was adopted by the parties in 1957 following a seniority dispute in 1956 which involved the hiring of employes from another railroad. It asserts that the resulting modifications dealt with seniority and the effect of junior service employes obtaining craft positions ahead of senior departmental employes and notes that the phraseology and grammatical construction of Rule 6(d) shows that the terms, hired and promoted, apply only to craft positions in the Car Repair Department. Moreover, it avers that Rule 26(a) which provides that Carrier shall have exclusive jurisdiction over new employes during the ninety (90) day probationary period reinforces and supports its interpretation of Rule 6(d) since it has exclusive control over the probationary employe and the probationary employe has not accrued seniority during this period.

In our review of this case, we agree with Carrier that Rule 6(d) was not intended to apply to newly hired probationary helpers. Carrier's detailed development of the genesis and rationale of this provision, particularly, the precipitating incident in 1956 and the rule's grammatical articulation persuades us that it was adopted to address a definable seniority problem. Specifically, it permits senior employes to exercise displacement rights when less senior employes are

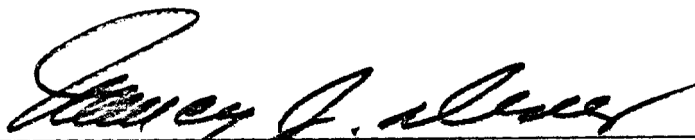
hired or promoted to a craft position in the Car Repair Department. The application of seniority protection in this instance applies to employees with accumulated seniority service and by definition, the newly hired helper Claimant sought to displace would not have acquired protective seniority during the probationary period. In Second Division Award No. 9107 involving the same Organization and the same Carrier, we held that a probationary employee did not accumulate seniority while in a probationary status. Rule 6(d) accords displacement seniority rights when the more senior employee seeks to displace a new employee or an existing employee promoted to a craft in the Car Repair Department. Neither of these contemplated scenarios is present here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1980