

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Atchison, Topeka and Santa Fe Railroad Company)

Dispute: Claim of Employes:

1. That the Carrier erred and violated the contractual rights of the Claimant when they failed to allow him to properly exercise his seniority rights, upon return from leave of absence, by not allowing him to displace a junior employe.

2. That, therefore, he be made whole for any loss of seniority rights that he was deprived of.

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 dispute herein involves the interpretation or application of Rule 17(a) of the applicable Agreement which reads in part:

"(a) An employe returning from leave of absence ... may resume his former assignment provided it has not been abolished or taken by a senior employe in the exercise of seniority rights, or may, upon return or within four (4) calendar days after resuming duty on his former position, exercise seniority on any position bulletined during his absence."

The record shows that Claimant was an Electrician employed at Carrier's San Bernardino shop. He was on authorized leave of absence April 3 to May 3, 1982. Upon returning from leave of absence on May 3, 1982, Claimant requested that he be permitted to displace on Position 7643, which position had been bulletined during his absence. He was not permitted to do so, but was placed on Position 7525, which he had held when he went on leave of absence, and was required to remain on that position during the remainder of the workweek. He was permitted to move to position 7643 on Monday, May 10, 1982. Positions 7643 and 7525 had the same hourly rate of pay and a Monday through Friday workweek.

The Organization contends that the Agreement was violated because of Claimant not being permitted to exercise his seniority "upon return," and was not permitted to do so until the following week. The Carrier contended in the on-property handling and in its submission, that, for operating reasons, it was decided to change the method of handling employes at the San Bernardino facility, and one of the changes was to require leave of absence returnees to physically displace onto the position their seniority would allow at the beginning of the first workweek following their return, which was what was required of the Claimant in the present case. The Carrier contends that prior to implementing the change, all of the Local Chairmen were called to a meeting in early March, 1982, the changes were explained to them, and they were asked if they had any questions, objections, etc., that the Local Chairman of the Petitioning Organization "raised no question or objections to the proposed changes and on March 5, 1982, the Guidelines were first implemented."

The Carrier also contends that the Claim as initially filed by the Local Chairman was amended on appeal by the General Chairman to request a monetary payment. The wording of part (2) of the Claim is unusual and may be subject to different interpretations. However, in its submission to the Board the Organization states "our claim did not request money." This position was emphasized in the handling of the dispute at the Board level. Under the circumstances, the Board will dispose of the Claim on its merits.

As to Rule 17(a), quoted in part heretofore, the Board agrees with the Organization that it is clear and unambiguous. We agree with Award 8385 of this Division, which held in part:

"As an appellate body, we cannot disregard the presence and force of clear and unambiguous language. We must give it its intended effect."

When a Rule is clear and unambiguous, it may be amended or changed only by agreement of the parties in accordance with Rule 118. The clear and unambiguous language of Rule 17(a) could not properly be changed in the manner described by the Carrier. Neither may the Board properly change it through the guise of an interpretation.

The Carrier violated the clear language of Rule 17(a) and the Board so finds. However, we again point out that the Claim did not request money, and no money will be allowed.

AWARD

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985