

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement, particularly Rules 17 and 25 on May 7, 1984 when it improperly recalled Electrician Helpers K. J. Olmos and J. Khattibi, both having a lower seniority date than the Claimant T. Takacs, and it failed to recall T. Takacs from a furloughed status in seniority order.

2. That accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to return T. Takacs to service with all of his seniority and other rights unimpaired and compensate him for all lost wages since April 25, 1984 in accordance with Rules 17 and 25.

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 employees 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.

The Claimant, T. Takacs, holds seniority as an Electrician's Helper at the Carrier's Milwaukee, Wisconsin facility. During May, 1984, the Claimant was on furlough, and on May 3, 1984, the Carrier attempted to notify the Claimant by phone that a position was available at the Carrier's St. Paul, Minnesota facility. The Carrier left a message with the Claimant's father at 9:00 A.M. At 11:06 A.M., in accordance with phone bill exhibits provided, the Claimant returned his father's call and at 11:10 A.M., the Claimant called the Carrier's Milwaukee facility and was informed that the jobs were no longer open and that Electrician's Helpers with lower seniority had been given the positions.

The Organization argues the Claimant has rights in this matter. If he did not have rights, why would the Carrier call him to offer the position? The Claimant returned the call within a short period of time and was prepared to accept the position as offered. It is agreed that the Claimant does not hold seniority at the St. Paul point. However, this situation is covered by the Rule. Rule 25 states "Upon application, employees laid off, will be given preference to transfer to the nearest point where men may be needed." If the Claimant had not made the application, why then would the Carrier have called him? It is only appropriate that the Claimant who has rights in this matter be given sufficient time to respond to the Carrier's call. The record does show that the Claimant did respond within minutes after being informed by his father that a position was available. Finally, with respect to threshold issues raised by the Carrier, the appropriateness of the Claim does not depend on whether or not junior employees or new employees were hired to positions that should have been offered to the Claimant. In addition, the Claim is not vague; the Claimant wants the job since he was deprived of his rightful seniority rights in this matter.

The Carrier argues that seniority is confined to the point employed and that while Rule 25 allows upon application, that employees will be given transfer preference, this does not necessarily mean that they will be hired nor does it necessarily mean that they will be hired in seniority order. The Claimant has no entitlement in St. Paul because his seniority is confined to the Milwaukee shop. The Claimant did not fill out the required transfer form (PD-108) the Carrier provides for this, nor did he make any oral application for transfer. The Claimant did not respond in a few minutes, but over two hours later. The Carrier needed to have the help available as soon as possible, not to wait around until the Claimant decided to become available. Jobs are filled on a first come, first serve basis, and it was only due to the Carrier's willingness to provide positions to laid off employees that the Claimant was called in the first place. The Carrier should not be punished for attempting to provide jobs to furloughed employees.

The Board finds, upon complete review of the evidence, that the Carrier did recall junior employees from the Milwaukee shops to positions at their St. Paul Minnesota facility. With respect to the threshold issues, the Board finds that the initial wording of the dispute by the Organization "placed a junior employee or a new hire ahead of the Claimant" does not preclude this Claim since by the Carrier's own admission, it does not agree that the Claimant had any rights in this matter. The Claim is not vague; the Claimant wants to be recalled to the job in question and to be compensated for lost wages during the time his seniority rights were violated. In addition, the Claimant was employed at the Milwaukee shops; he received the phone call from the Milwaukee shops and this would be the logical place for him to file his Claim. A key element of this case is the assertion by the Organization and a denial by the Carrier that the Claimant had made application for transfer. The Carrier notes that their Form, PD-108, was not on file. This argument was not raised on the property, and therefore cannot be considered by the Board.

The evidence is, and not denied by the Carrier, that the Carrier called the Claimant to offer the position to him. Therefore, if no application, either written or oral, was on file, then why would the Carrier call the Claimant since he had been laid off for a period approximately three years? It is true that the Claimant does not hold seniority at the St. Paul location. However, Rule 25 does give him some rights with respect to open positions at other points. The Board does not expect the Carrier to hold positions open indefinitely waiting for employees to respond to their calls, however, it does seem reasonable in this case that the Claimant did respond within a short time of the Carrier's call and at least one or both of the junior employees had not reported to work in St. Paul for several days after this phone call. Certainly when the Carrier was advised that the Claimant wished to accept the Carrier's offer, they could have called one of the junior employees to advise them that the position had been taken by a senior employee. The Carrier did not claim an emergency situation. The Rule requires the Carrier to give preference. Webster's Dictionary, in its first definition of the word "preference", states in part that this gives the person the "power and opportunity of choosing". The Board does not agree with the Carrier's contention that Rule 25 allows "a first come, first serve basis." The Claimant in this case was denied the power or opportunity of choosing, and this opportunity was taken away by the Carrier without sufficient reason, and therefore the Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1986.