

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carmen Lyle D. Heath, Allen R. Harksen and David G. Ammon were unjustly deprived of work and wages when the Chicago & North Western Transportation Company violated the controlling agreement and the provisions of File 83-4-43, letter of instructions issued July 15, 1957 by Director of Personnel T. M. Van Patten, on December 9, 1981, when it allowed Foreman B. C. Koehler to displace a junior employee belonging to the carmen's craft.

2. That the Chicago & North Western Transportation Company be ordered to pay the three carmen claimants eight (8) hours pay per day at the carmen welder's rate of pay for the following dates, as these employees were affected on a day-to-day basis by the abolishment of carman welder's positions:

L. D. Heath	Dec. 9, 10, 11, 14, 15, 16, 17, 18	(8 days)
A. R. Harksen	Dec. 21, 22, 23	(3 days)
D. G. Ammon	Dec. 26, 1981 until this violation is corrected.	

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 waived right of appearance at hearing thereon.

As third party in interest, the American Railway and Airway Supervisors' Association was advised of the pendency of this case, but chose not to file a Submission with the Division.

Foreman B. C. Koehler was displaced by a senior Foreman at the Carrier's Clinton, Iowa Car Shop on December 9, 1981. There were at that time ten Foremen junior to Koehler and working in the same class. Seven were Car Foremen on various tracks, two were Wheel Shop Foremen, and one was a Blacksmith Foreman. Koehler and the other Foremen were covered under the terms of an Agreement between the Carrier and the American Railway and Airway Supervisors Association (ARASA).

The Carrier determined that Koehler was not qualified for any of the ten positions. It therefore permitted him to exercise displacement rights as a Carman based upon his seniority in that craft.

The Organization asserts that Koehler was improperly permitted to exercise displacement rights into the Carman craft, thereby depriving the Claimants of work and wages as detailed in the Claim. The Organization acknowledges that Foremen and Supervisors promoted from the Carman ranks continue to accumulate seniority as Carman, and under certain conditions may exercise such seniority to return to Carman positions. However, it argues that in the instant case Koehler could have displaced a Foreman junior to him and continued working as a Supervisor.

With regard to Koehler's qualifications as a Foreman, the Organization argues that since he served in a supervisory capacity at Clinton, the Carrier certainly must have felt he had the potential to serve in a similar capacity at other locations and over different processes. Koehler should have been given opportunity to qualify for other supervisory positions. Instead, the Carrier disqualified him from same before he even held the jobs. And it appears that he voluntarily relinquished his seniority rights in the supervisory class by signing a December 7, 1981, Letter attesting to his lack of qualification for the supervisory jobs held by Foremen junior to him.

The Carrier notes that as a Foreman, Koehler was covered by its Labor Agreement with the American Railway and Airway Supervisors Association. Under Rule 8 of that Agreement:

"Employees whose positions are abolished or who are displaced may exercise their seniority by displacing a junior employee in their seniority district or revert to the class from which promoted but their exercise of seniority in that class shall be governed by the rules and agreements governing the class to which reverting."

Moreover, both parties have relied upon a July 15, 1957, Letter of Understanding from T. M. Van Patten, Director of Personnel, to General Superintendent Motive Power and General Superintendent Car Department. And the Organization has cited Second Division Award No. 5933 in support of its position. That Award rested heavily on the interpretation and application of the 1957 Letter Agreement.

In concert with Award 5933, this Board finds that resolution of the instant case is also dependent upon the application and interpretation of the Van Patten Letter Agreement. It is quoted in pertinent part below:

"Agreements in effect with the federated crafts have been interpreted as follows:

1. Employees promoted from federated crafts to supervisory positions who as result of abolishment of their position are unable to hold position as supervisor and thereby revert to the class from which promoted are in possession of displacement rights in accordance with their seniority.

2. Employees promoted from positions coming under the scope of the federated crafts' agreement to supervisory positions, who as result of abolishment of position and failure to exercise seniority as supervisors, or on account of voluntary relinquishment of position, return to positions coming under the scope of the federated crafts' agreement, are not in position of displacement rights and are not entitled to displace any junior employee in the craft. These employees, returning voluntarily to the class either as the result of giving up their position or as a result of position abolished and failure to exercise seniority to another position for which qualified are permitted to take any open position, and in the event there is no open position must wait until their seniority permits them to bid on a position." (Emphasis supplied)

Thus, in accord with the Letter Agreement, a Foreman returning to his craft as a result of abolishment of a Foreman position must first exercise his seniority to another appropriate Foreman position for which he is qualified. In Award 5933, which involved the same parties as does the present case and strikingly similar facts, the Board sustained the Claim in large part because it found no evidence that the Foreman was not qualified to take another supervisory position. That Board found:

"Carrier's averment that Hitz (the Foreman) was not qualified to perform service as a foreman on the repair track is a selfserving conclusionary statement and has no evidentiary value.

While it is true that Carrier has the initial right to determine qualifications of its employees the determination is subject to rebuttal.

The record contains no admission of waiver by Hitz that he was not qualified to displace the junior foreman on the repair track."

In the instant case the record does contain a written admission by Koehler that he was not qualified to serve as a Supervisor in the available positions to which his seniority entitled him. Therefore, we find no reason to discount the Carrier's determination that he was not qualified for such positions. Furthermore, we do not regard Koehler's written acknowledgment of his lack of qualification as evidence that he voluntarily relinquished his supervisory seniority rights. Rather, his Letter merely attested to his qualification level. It did not indicate that he wished to waive his right to exercise seniority as a Supervisor.

We note the Organization's argument that Koehler's written statement was not given to Employee Representatives on the property. However, the statement itself is not a new argument, it merely confirms the Carrier's argument that he was not qualified for the supervisory positions to which he was entitled by virtue of his seniority. And that argument was indeed raised on the property by the Carrier.

In accordance with the Van Patten Letter Agreement of 1957, we find that Koehler was not able to hold a position as Supervisor and did not voluntarily relinquish his supervisory status. He did not "fail to exercise seniority to another position for which qualified," and it was appropriate for the Carrier to permit him to exercise his Carman seniority in returning to his craft.

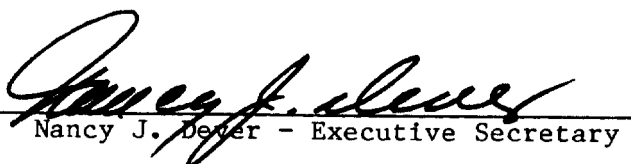
Both parties presented several additional arguments, which we have evaluated in their entirety. Those which were not made on the property were disregarded. Since we have determined, however, that resolution of this Claim rests on application of the 1957 Letter Agreement, there is no need to discuss the remainder of the parties' arguments here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1986.