

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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 Apprentices M. Ayers, H. Clark, F. Pflaumer, and B. Varney, were deprived of their contractual rights when the Chicago and North Western Transportation Company permitted laid-off Carmen to transfer to Proviso, Illinois to bump and displace them on May 8, 1983.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Apprentices M. Ayers, H. Clark, F. Pflaumer and B. Varney each forty, (40) hours pay at the straight time rate of pay.

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 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.

Claimants are Carmen Apprentices. On May 1 and 2, 1983, the Carrier recalled to service six furloughed employees, including Claimants, at the Carrier's Proviso, Illinois Yard. On May 8, 1983, the aforementioned employees, including Claimants, were bumped and displaced by laid-off Journeymen Carmen who transferred from other locations as a result of force reductions at those locations. Claimants were not given a five day Notice of their layoff and therefore seek 40 hours pay.

The Organization contends that by laying Claimants off and not giving the five day Notice, the Carrier violated Rules 25, 26, and 28 of the Controlling Agreement, the Memorandum of Agreement covering Apprentices, dated June 1, 1973, and a Memorandum from the Carrier's Assistant Vice President Labor Relations. According to the Organization, the Apprentices are to be kept on a separate seniority list and could not be displaced by Journeymen Carmen.

The Carrier concedes that Claimants were enrolled in the Apprentice Program. However, according to the Carrier, when Claimants were recalled to service in May, 1983, they were recalled to regular Carmen jobs and not Apprentice positions. Therefore, according to the Carrier, even assuming that Apprentices can not be displaced, since Claimants were in Carmen positions, they took those jobs with the conditions attached to those positions. The Journeymen Carmen who displaced Claimants were from other locations who exercised their seniority by authority of Rule 26. In such situations, the Carrier asserts that no five day Notice is required.

Rule 25 states:

"When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per Rule 28 to govern; the men affected to take the rate of the job on which they have placed themselves.

Men affected under this rule will be given five days' notice and lists will be furnished local committee."

* * *

Rule 26 states:

"When forces are reduced and men are needed at other points they will, at their request, be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the railway company. Seniority to govern in all cases."

Rule 28 states:

"Employees in all shops and enginehouses, repair tracks and inspection forces, at each point shall be governed by common seniority in their respective crafts

Four subdivisions of carmen as follows:

Pattern makers	Painters
Upholsterers	Other carmen

The seniority lists will be open to inspection and copy furnished the committee."

The 1973 Apprentice Agreement states:

"2. Apprentice positions of each craft will be established at locations where it can be anticipated that need for mechanics of that craft will exist when apprenticeship is completed."

The Memorandum describing the Apprentice Training Program states:

"Rates of pay and seniority roster

. . . Apprentices are carried on a separate roster and have no displacement rights; likewise, they cannot be displaced."

The Organization carries the burden of establishing the elements of its Claim. Assuming the Organization's theory is correct that Apprentices are carried on a separate seniority list as stated in the Memorandum (which Memorandum the Carrier asserts is not binding) and can not displace or be displaced, (an issue that we need not decide in this case), the Organization has nevertheless failed to persuasively demonstrate that, they were working as Apprentices and not as Carmen when the Claimants were working at the Proviso Yard in May, 1983. The contention of the Organization is the Journeymen Carmen displaced Apprentices from their Apprentice positions. Argument is not evidence; that assertion of fact is simply not borne out by the evidence of the record. Rather, we are satisfied that the Journeymen Carmen displaced employees working in Carmen positions who, coincidentally, were also Apprentices.

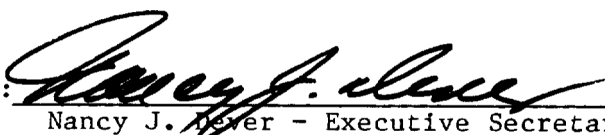
The issue thus becomes whether Rule 25 (which requires a five day Notice) or Rule 26 (which does not) applies to the facts in this case. As we read Rule 25, the Notice provisions contained therein do not apply to the facts in this case. The Five Day Notice requirement applies at the point where the force reduction occurred, which, in this case, was the point where the Journeymen Carmen who displaced Claimants held positions and were put on lay-off. There is no evidence in the record of a force reduction at the Proviso Yard on the relevant dates when Claimants held positions. Rule 26 clearly contemplates that Journeymen Carmen could exercise their seniority and bump the junior Claimants under these circumstances. Nowhere in the sections of the Agreement cited by the Organization do we find a provision that requires that Five Day Notice be given to a junior employee being bumped by a senior employee from another employee's location and where seniority is then exercised by the senior employee under Rule 26.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.