

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
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company erred and violated the contractual rights of Shop Extension Electrician W. L. Ogden when they allowed him to be inappropriately displaced on June 22, 1983.

2. Therefore Electrician W. L. Ogden should be compensated for two (2) days pay and any other rights, benefits or privileges he may have been deprived of as a result of Carrier's error.

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.

W. L. Ogden, an Electrician in service with the Carrier, was bumped by an apprentice who had completed his apprenticeship on June 22, 1983. The apprentice was told that he was allowed to bump anyone that was his junior, and he chose to bump the Claimant. However, the Carrier has admitted that this was an error and that the apprentice should have bumped the junior journeyman Electrician. The Claimant who worked in the Carrier's Fort Madison, Iowa location was told that he could protect a short term vacancy in Chicago; and in accordance with the Carrier's practice, the expenses of the Claimant would be reimbursed while traveling.

The Organization argues that it was the Carrier who erred in this instance by allowing the Claimant to be displaced. The Claimant lost two days pay before the error was corrected. The Organization stated Rule III (d) was violated. The Organization notes the Claimant did not have an obligation to go to Chicago in order to mitigate his damages.

The Carrier argues that the well-defined principle in cases such as this is "work now and grieve later" and to this effect cited several Second Division Awards. While the Carrier admits they made a mistake and compensated the Claimant for two of the four days he was off, the error was inadvertent and the Claimant was offered a position for the two days, and it was his own decision to take the two days off. The Carrier states that the Claimant was given a chance to mitigate his damages by filling a vacancy, and he chose not to do so.


The Board, upon complete review of the evidence, finds that the principle of "work now, grieve later" is a universal principle not only in the railroad industry, but also among industry in general. However, the Board's reading of this case indicates that the Claimant was not ordered to protect the assignment in Chicago; rather the Carrier gave him an opportunity for the two days in question, June 22 and June 23, 1983. The Carrier also stated that the Claimant has an obligation to mitigate his damages which he could have done by filling the vacancy in Chicago. This is a much closer question. The Carrier does pay the expenses of their employees while traveling under these circumstances, and the error was certainly inadvertent. Yet, it does not seem to the Board that it is reasonable for an employee to travel to Chicago for two days work when it was the Carrier who allowed the improper bump in the first place. Under the very narrow circumstances of this case, the Board would find that the mitigation available to the Claimant on the two days in question was not reasonable. Therefore, the Claim will be sustained for pay only for the Claimant for June 22 and June 23, 1983.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devall - Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1986.