Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11077
SECOND DIVISION Docket No. 10221-T
2-C&NW-CM-'86

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 Employes:

1. Carmen M. F. Mussman, D. E. Rogers, M. L. Lipscomb, D. G. Widner, T. H. Wilkens, D. P. Foster, J. P. McCombie, N. C. Scudder, J. R. Krueger, W. P. Wallace, R. R. Marje and T. R. Ehrhart 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 November 5, 1981, when it allowed Foreman R. E. Wulf to displace a junior employe belonging to the carmen's craft.

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

M. F. Mussman	Nov. 5, 6	(2 days)
D. E. Rogers	Nov. 9, 10	(2 days)
M. L. Lipscomb	Nov. 12, 13, 16, 17	(4 days)
D. G. Widner	Nov. 18, 19, 20, 23, 24	(5 days)
T. H. Wilkens	Nov. 25, 26, 27	(3 days)
D. P. Foster	Nov. 30, Dec. 1	(2 days)
J. P. McCombie	Dec. 2	(1 day)
N. C. Scudder	Dec. 3	(1 day)
J. R. Krueger	Dec. 4	(1 day)
W. P. Wallace	Dec. 7	(1 day)
R. R. Matje	Dec. 8	(1 day)
T. R. Ehrhart	Dec. 9, 1981 continuing 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 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.

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

On November 4, 1981, a Foreman's position at the Carrier's Clinton, Iowa Car Shop was abolished. There were at that time four Foremen junior to this Foreman and working in the same class. Two were Car Foremen on various repair tracks, one was Wheel Shop Foreman, and one was a Blacksmith Shop Foreman. The 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 this Foreman was not qualified for any of the above four positions. It therefore permitted him to exercise displacement rights as a Carman based upon his seniority in that craft. He displaced a set-up helper on November 5, 1981.

The Organization asserts that this Foreman 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 Carmen ranks continue to accumulate seniority as Carmen, and under certain conditions may exercise such seniority to return to Carmen positions. However, it argues that in the instant case this Foreman could have displaced a Foreman junior to him and continued working as a Supervisor.

With regard to this Foreman's qualifications, the Organization argues that since he served in a supervisory capacity at Clinton, he must have had the potential to serve in a similar capacity at other locations and over different processes. This Foreman should have been given opportunity to qualify for other supervisory positions, the Organization asserts. Instead, the Carrier disqualified him from same before he even held the jobs.

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

> "Employes whose positions are abolished or who are displaced may exercise their seniority by displacing a junior employe 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 the 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 Letter of Agreement. It is quoted in pertinent part below:

> "Agreements in effect with the federated crafts have been interpreted as follows:
>
> 1. Employes promoted from federal 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. Employes 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 employe in the craft. These employes, 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."
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> (Emphasis supplied)

Thus, in accord with the Letter of Agreement, a Foreman returning to his craft as a result of abolishment of his Foreman position or displacement by a more senior Foreman 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 employes 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 Carrier asserts that the Foreman has advised the Carrier that he is not qualified for positions which require knowledge of specific AAR Rules. But the Carrier has provided no details as to when he made such a statement, or to whom. It therefore seems to the Board that like the Carrier's position in the above-quoted case, the Carrier's assertion here is self-serving and of no evidentiary value. There is simply no evidence that he made such an admission. Surely, given the contractual significance of such an assertion, any such advisement by him should have been put into writing. We therefore find reason to discount the Carrier's determination that he was not qualified for such positions.

There is simply no evidence that he ever attempted to exercise his seniority to another position for which he is qualified, and no conclusive evidence that he was unable to hold a position as a Supervisor. Thus, we find the Carrier to be in violation of the July 15, 1957 Letter of Understanding which both parties have cited as authority in this case.

With regard to the remedy, we believe it is appropriate for the Carrier to pay Claimant Mussman for wage loss he suffered as a result of being displaced by this Foreman. And to the extent that Mussman's displacement caused other of the Claimants a wage loss, this Claim is upheld.

Both parties presented several additional arguments, which we have evaluated in their entirety. Those which were not made on the property were disregarded.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.