

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister 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. Carman James P. McLaughlin was deprived of employment when the Chicago and North Western Transportation Company violated Rules 16, 17, 28 and 29 of the controlling agreement, when it improperly rehired terminated Carman F. E. Greenwell as an MIC (Mechanic-In-Charge), thereby discriminating against those Carmen whose employment status has not been terminated with the Carrier.

2. That the Chicago and North Western Transportation Company failed to comply with the provisions of Article V 1(a) of the August 21, 1954 Agreement, when it did not supply written reasons for denial within the prescribed time limits.

3. That the Chicago and North Western Transportation Company be ordered to compensate Carman James F. McLaughlin for all lost wages at eight (8) hours per day at the daily rate (Carmen), and all overtime, from June 12, 1982, to his return to active Carrier's service, plus 6% annual interest and reimbursement of all losses sustained account loss of coverage under health and welfare and life insurance agreements during the aforementioned period.

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.

The Organization states that on June 10, 1982, the Carrier terminated Carman MIC Greenwell effective June 11. On June 12, 1982, the Organization contends Greenwell was "rehired" as an MIC at Iowa Falls. According to the Organization, this action violated the rights of Carman James F. McLaughlin,

the Claimant. The Organization argues the Carrier was not entitled to "rehire" Greenwell as a Mechanic-in-Charge, and such action was discriminatory to all Mechanics in service. The Organization asserts its position is supported by Rules 16, 17, 28 and 29 of the Agreement. Rule 16 deals with the bulletining of new or vacant jobs. Rule 17 states in pertinent part:

"Mechanics in service will be considered for promotion to positions of supervisory foremen and mechanics-in-charge."

Rule 28 deals with seniority. Rule 29 prohibits anyone other than Mechanics from performing Mechanics' work, but also provides:

"This does not preclude work being performed by car department mechanics-in-charge assigned to outlaying points at which the force does not exceed five men, or in train yards."

In addition to the asserted Rules violations, the Organization argues that the Carrier's response "contains no facts or reasons for denial of our claim, except for Carrier's opinion." In support of its averred position that the Carrier failed to properly deny the Claim, the Organization cites Second Division Awards 9198 and 9201. Essentially, these Awards stand for the principle that a Carrier's denial should provide the Organization with information on a basis for finding the Claim defective. We find this is precisely what the Carrier did on August 13, 1981, when it stated in relevant part:

"I remind you that an MIC is an appointive position, and the carrier has the option as to who fills this position. It is highly impracticable that Mr. McLaughlin would be more qualified to fill this position than Mr. F. E. Greenwell, since Mr. Greenwell did in fact, fill a position for over two years prior to his termination of June 11, 1982. Also that Mr. McLaughlin is not a journeyman carman, and therefore Mr. Greenwell in addition to being more experienced and more qualified is senior to him."

Our examination of the record reveals the termination of Greenwell was mandated by the terms of the March 4, 1980, Labor Protective Agreement. It is uncontested that Greenwell had approximately sixteen years experience as a Carman and over two years experience as a Mechanic-In-Charge. According to the Carrier, his years of service and experience as a MIC are considered superior to those of the Claimant and other individuals employed at Des Moines. The Carrier also contends that at the time of Greenwell's appointment on June 12, 1982, the Claimant had not yet attained Journeyman's status.


With these undisputed facts in mind, we conclude the position of an MIC is an appointive job which does not require the strict application of seniority. Rule 17 is clear and to the point. It states that Mechanics in service will be "considered for promotion." There is no evidence of record to support a finding the Carrier failed to consider other Mechanics. Thus, we find no evidence the Claimant was wrongfully or discriminatorily deprived the disputed MIC position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1987.