

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association  
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rule 17, when Sheet Metal Worker J.N. Reynolds was not permitted to exercise his seniority when returning to work on March 5, 1984, San Bernardino, California.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Sheet Metal Worker Reynolds in the amount of forty hours (40') at current rate of pay for the period of time he was not permitted to exercise his seniority.

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 Claimant, J. N. Reynolds, a Sheet Metal Worker with the Carrier, was on a medical leave of absence from August 25, 1983 through March 4, 1984. He returned to work on Monday, March 5, 1984, and discovered that his job had been abolished. The Claimant claimed Position 8420, which was occupied by a junior Sheet Metal Worker, Mr. D. E. Morrison. The Claimant was placed on Job 8416 for the remainder of the work week and then was allowed to displace Mr. Morrison on Job 8420 the next full work week, which began March 12, 1984.

The Organization argued this action on the part of the Carrier was a violation of Rule 17, which reads in pertinent part as follows:

"Exercising Seniority Upon Return from Leave of  
Absence or Temporary Assignment

(a) An employe returning after leave of absence, sick leave, military service, disability annuity, vacation, temporary assignment or reinstatement which prevented him from bidding (including vacation or other temporary relief service on official or supervisory position) or upon being relieved from an official or supervisory position who has been absent from his former position 180 consecutive calendar days or less may resume his former assignment, provided it has not been abolished or taken by a senior employe in the exercise of seniority rights, or may, upon return or within four (4) calendar days after resuming duty on his former position, exercise seniority on any position bulletined during his absence.

(b) An employe whose permanent assignment has been abolished or taken by a senior employe in the exercise of seniority rights, or who has been absent from his former position in excess of 180 consecutive calendar days may, upon return, exercise seniority over any junior employee. The returning employe may displace on a temporary vacancy and upon release therefrom may exercise his seniority over any junior employee. Employees displaced through exercise of seniority under this rule may exercise seniority over any junior employee. - - - - "

The Organization stated the Rule is clear; the Carrier has violated this Rule. The Organization cites two Third Division Awards, one of which allowed pay because of the violation of seniority rights. The Organization argued pay is appropriate in this case because of the Rule's violation.

The Carrier argued it has a practice of not allowing displacements under circumstances such as we have in this case unless it is for a full work week. The Claimant was allowed to place on a job for the remainder of the work week beginning March 5, 1984. Both jobs were Monday through Friday, and both jobs were paid the same rate of pay. The Carrier noted it had a lot of problems with displacements at this location and needed to have a Policy which provided for actual displacements at the beginning of the week. The Organization did not object when the policy was implemented. The Carrier found this necessary to meet the needs of its service. The Carrier pointed out that the Claimant lost no time or money and stated the Organization can cite no precedent for penalty pay.

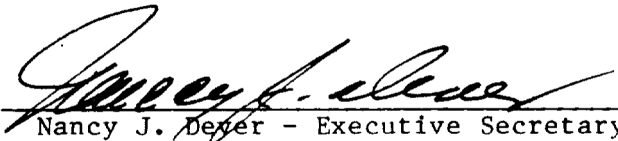
Upon complete review of the record, the Board finds the Carrier to have violated the clear and unambiguous language of Rule 17. When the Board is faced with clear and unambiguous language, it has no authority to change or modify that language in any way. The Board concludes that the Carrier has violated Rule 17. However, the Claimant was fully employed during the period March 5, 1984 through March 11, 1984, and the Board can find no precedent cited in this case that would provide for punitive damages. Therefore, the Claim for money will be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1987.