

CORRECTED (2nd)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11250
Docket No. 10868
2-AT&SF-EW-'87

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Atchison Topeka & Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company in violation of the current agreement erred and violated the contractual rights of Mr. Robert Ramirez when he was laid off in force reduction effective November 22, 1983 while retaining junior employees on his seniority list.

2. That, therefore Mr. Robert Ramirez be called back off force reduction to his respective position as an Electrical Apprentice and also be compensated for all time lost at his apprentice pro-rata 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 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.

This is a contract interpretation dispute wherein the Organization maintains that the Carrier failed to comply with Rules 24(a), 44, and 111 when they laid off the Claimant. Those Rules state in pertinent part:

"Rule 24(a)

When it becomes necessary to reduce expenses or adjust forces . . . employees will be laid off in reverse of seniority, in accordance with the provisions of Rule 110 or 111, except that the senior employees of the class capable of doing the work shall be retained and take the rate of the job to which assigned.

Rule 44

However, an employee whose job is abolished, or who may be displaced from his position by other causes, will be permitted to exercise seniority on any job occupied by a junior employee on his seniority list."

In the instant case the record indicates agreement upon the following facts. Claimant had seniority as an Electrical Apprentice. He was offered and in full compliance with Rule 111(f) of the Agreement, declined upgrading as a set-up Electrician by written letter. Employees junior in seniority on the Apprentice roster were subsequently offered and each accepted upgrading as upgraded Electrician. A separate list was maintained on upgraded Apprentices governed by Rule 114(f) which reads:

"(f) The right to decline upgrading is recognized, . . . it must be in writing . . . Such employee will not be eligible for upgrading unless or until the waiver is rescinded in writing in the same manner it was placed in effect. If an individual waives his right to promotion and later retracts that waiver, he will not again be eligible for upgrading until the date following receipt of the written retraction of the waiver by his supervisor and local chairman; whereupon he will become eligible for subsequent upgrading in accordance with Paragraph (a)."

In the upgraded list, under terms of the Agreement, employees junior to the Claimant were working on a non-seniority basis and by indenture date were given Agreement rights to bidding and bumping only.

In the facts of this case the Carrier laid off Claimant in a force reduction effective November 22, 1983. Employees junior to the Claimant who had accepted set-up and were at the time of the lay off in an upgraded status were maintained.

The Organization argues that inasmuch as there are only two seniority lists, that of Apprentice and Journeyman, whereby junior employees holding seniority on the Apprentice list were not furloughed, Carrier violated the Agreement. It is the Organization's position that force reductions had to be in reverse seniority order (Rule 24) and as junior employees held no other seniority rights than as Apprentice, they held no Agreement rights to furlough after the Claimant.

The Carrier maintains that Claimant declined the offer of a set-up to an electrical position and "never rescinded" that declination. As such junior employees bypassed Claimant to a higher classification. It is the Carrier's position that:

"there is no Agreement support for allowing an employee in one classification to displace an employee working in another classification. Nor is there any contractual requirement necessitating the retention of an apprentice position simply because an employee with less apprentice time is working a journeyman position on a non-seniority basis."

Carrier maintains that as the Claimant held the only remaining Electrical Apprentice position and the Carrier abolished only that one position, Claimant was furloughed in full compliance with the Agreement and Rule 111(f).

In the case at bar the critical issue is the status of Claimant who requested not to be set-up into the upgraded classification. Our review of the upgraded status classification indicates that it governs only bumping and bidding and is superseded by Rule 24 in layoff. Under Rule 24, in accordance with Rule 111 and with considerations given to ability, layoff would occur in "reverse of seniority."

This Board's full and complete review of the contract provisions in dispute and "Appendix 4 of Agreement - Apprentice Training Program Agreement," indicates a conflict. The Claimant had the right to exercise seniority over junior employees. The Carrier determined that it required upgraded Electricians, but no longer needed the only remaining Electrical Apprentice position. As stated in Second Division Award 9557:

"The Carrier has the unilateral right to determine how many and which classifications it needs to perform work assignments at any given time."

All junior employees had moved to a higher classification. There is nothing in the contract that Carrier must now offer the Claimant an upgraded status, as the Agreement provides for "promotion" to upgraded positions.

If Claimant wished to avoid the layoff, as senior employee he had ample opportunity under the Agreement, to accept promotion to an upgraded Electrician position which would have entitled him to bump junior employees on the Apprentice Seniority list from their jobs, even though they also held upgraded positions. Claimant could do so under the provisions of Rule 111 if he was capable of doing the work.

However, two principles of contract interpretations are herein applicable. First, it has long been held that employees may bump to avoid lay off both laterally and downward in classification. In the facts and circumstances of this case, Claimant had such rights. However, Claimant had never rescinded his letter and there is no evidence he was qualified for upgraded status in that he could perform the work of his juniors. In the instant case the Claimant is not attempting either lateral or downward bumping. A major principle of bumping to avoid layoff is that a layoff may not be used as a mechanism to secure a position. As such, Claimant had no such rights.

Second, another established Rule is that when contracts produce alternative results, one reasonable and the other unreasonable, the former interpretation is adopted. In the facts and circumstances of this case, to find for the Claimant on the technical grounds of contract interpretation would lead to illogical results. Junior employees could then be bumped although the Claimant had not previously accepted upgraded status or qualified for their position. This result neither fits the general language of the Agreement on "promotions" and retaining "senior employees . . . capable of doing the work," nor leads to a reasonable outcome.


As such, this Board finds for the Carrier. The Agreement has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1987.