

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: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the controlling Agreement when on the date of January 3, 1983, they recalled a junior man to service from furloughed status, in lieu of calling Claimant, Carman A. M. Jourdain, with superior seniority; allowed the junior employee to work on the above date, while Carman Jourdain, the senior employee remained in furloughed status, in violation of Rule 24(g) of the controlling agreement.

2. That accordingly, Carrier be ordered to compensate Claimant, A. M. Jourdain, for all time lost as a result of such violation of his seniority rights, eight (8) hours pay at the straight time rate of pay on the date of January 3, 1983.

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 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.

On December 23, 1982, several Carmen positions were abolished. On January 3, 1983, all Carmen, whose positions were abolished ten days earlier, were notified at approximately 10:30 A.M. that their assignments were restored immediately and were instructed to return to duty on their next regularly scheduled shift. The Claimant had been assigned to the day shift prior to the abolishment. His next regularly assigned shift was January 4, 1983. An employee with less seniority than the Claimant reported for duty for the second shift on January 3 and was worked. The Claimant contends that, if Carmen's work was available on January 3, 1983, he was entitled to be worked rather than an employee with less seniority.

Paragraphs (g) and (1) of Rule 24, Reduction in Force and Recall Procedure, are the provisions of the Agreement applicable to this Claim. These paragraphs provide:

"(g) In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within 15 days. The local committee will be furnished a list of men to be restored to service and employees will be recalled using the following procedure:

* * * *

(1) In the event of temporary furloughs of specified duration, not to exceed thirty (30) calendar days, positions abolished will not have to be bulletined under the provisions of Rule 15 when reestablished. Employees furloughed under this provision and employees disturbed by such position abolishments will return to their former positions held prior to the furlough."

The Carrier contends Paragraph (1) is a special provision, and it necessarily takes precedence over Paragraph (g) if there is a conflict between the two. We do not agree. In the first place, if Paragraph (1) has any specialness, it has to do with returning employees to service without the need to bulletin positions, not to returning them out of seniority order. Paragraph (1) does not once mention seniority, the subject of Paragraph (g). Additionally, we do not see that it requires immediate placement on the position being reestablished if such action would deprive a more senior employee of work.

A number of Awards have been cited for our consideration. Among these is Second Division Award 10856 involving these same parties. The Carrier contends that Second Division Award 10856 involves an identical case to this dispute. We find nothing in the language of Second Division Award 10856 to support such a conclusion. From the facts or background comments, all that we can determine is that the case dealt with a situation where a junior employee was called to work ahead of a more senior employee. The only provision of the Agreement cited was 24 (g). The substantive remarks in the Award are contained in three sentences found in the final two paragraphs, as follows:

"If practices in previous instances of the nature involved here were different from the procedures followed in the recall of the Carmen in this dispute, such instances were not cited.

In this type of Claim, the burden is on the petitioner to prove a violation by presentation of probative and substantial evidence. That requirement was not met."

It is obvious that the decision was grounded on the evidence presented or, rather, lack thereof and is not an authoritative contract interpretation.

We find Second Division Award 10706 more persuasive. That Award involved a Rule almost identical in provision and concept to Rule 24 here and dealt with returning Carmen to their jobs after their positions were abolished temporarily because of a strike. Senior Carmen were bypassed while junior Carmen returned to their jobs earlier. In holding that this was improper, the Board indicated the right to return to one's job must be read in conjunction with seniority provisions. Specifically, we stated:

"The language giving preference to senior laid-off men would be meaningless and redundant if junior employees were to be returned to their former jobs ahead of senior laid-off employees."

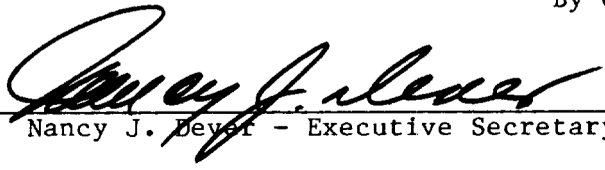
Accordingly, we find the Agreement was violated, and the Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of September 1987.