

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(R. D. Lundy
Parties to Dispute: (
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. January 1984 "bumping" right

Employee, a member of the International Association of Machinists and Aerospace Workers, District 19 ("Union"), claims that he was on the machinist seniority roster and eligible to be rehired by the Carrier when vacancies occurred in November, 1983. He was in fact called back and would have been rehired but for an error by the Carrier in evaluating his physical condition. The error was corrected but in the meantime a junior employee was hired. The employee contends that he was then entitled to "bump" the junior machinist, but his "bump" was denied.

Thereafter on March 15, 1984, a "letter agreement" was entered into between the Carrier and the Union (to which the employee was not a party and not advised). The Carrier takes the position that the agreement denies employee the bumping right. Employee contends that the Carrier position misconstrues the letter agreement or that it is contrary to the provisions of the Union Agreement, and that he was not a party to nor bound by the agreement; which could not take away his seniority rights.

2. September 1984 "bumping" right

Employee was rehired on February 21, 1984 as E & M Gang #1 - W/S Repairmen, which job was abolished on September 21, 1984. Again the employee's claim of right to "bump" was denied.

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 relevant facts precipitating the instant dispute are essentially uncontroverted. Claimant was a former Rock Island Railway Company Machinist subject to the March 4, 1980 Labor Protective Agreement. Under the provisions of this Agreement, former Rock Island employees who met the physical and rules standards of the Carrier had the first right of hire, and the Carrier was obligated to first utilize existing Rock Island seniority rosters in fulfilling employment needs.

In November, 1983, Claimant was notified of a Machinist vacancy with the St. Louis Southwestern Railway Company in Kansas City, Kansas. Claimant made application for the position and was given a physical examination. As a result of this physical exam, Claimant was rejected for the Machinist position. The individual next on the seniority roster, R. J. Taggart, was then notified of the vacancy and ultimately assigned to the Machinist position. Subsequent correspondence between Claimant's personal physician and the Carrier resulted in the approval of Claimant for service. He was notified by letter dated January 24, 1984, that his name had been returned to the list of eligible Rock Island employees to be given preference for hiring for future vacancies.

On February 21, 1984, Claimant was hired by the Carrier as a Water Service Repairman in the Maintenance of Way Department and established seniority in the craft and classification on that date. This position was covered by the Agreement with the Brotherhood of Maintenance of Way Employees.

On March 15, 1984, Carrier and the International Association of Machinists signed an Agreement extending the March 4, 1980, preferential hiring rights and benefits for Claimant. It was also agreed that when a Machinist vacancy at Kansas City does exist, Claimant will be hired for the position providing he can meet Carrier's physical standards.

On September 21, 1984, Claimant was notified that his position as Water Service Repairman was abolished effective September 28, 1984. He now contends that he should have been allowed to displace Machinist R. J. Taggart. It is Claimant's view that he had a "revived" right to displace the Junior Machinist after Claimant was laid off on September 28, 1984, since at all times relevant, he was under the jurisdiction of the Machinist's Union.

After careful consideration of the record in its entirety and the arguments presented by the parties, the Board agrees with the Carrier that this Claim is not properly before the Second Division of the National Railroad Adjustment Board. Several factors compel that conclusion. First, Claimant was never hired by the Carrier for a position covered by its agreement with the International Association of Machinists and Aerospace Workers. He was hired on February 21, 1984, for a position covered by the Agreement with the Brotherhood of Maintenance of Way Employees. When his position as Water Service Repairman was abolished on September 28, 1984, Claimant was not then entitled to displace a Machinist, as he does not hold seniority on the St. Louis Southwestern Railway Company as a Machinist.

Second, to the extent the instant Claim is predicated upon the contention that Claimant was denied his right to first hire under the Regional Rail Reorganization Act of 1973, this Board has no jurisdiction as that Act requires that an employee first submit his Claim to the Railroad Retirement Board. See, Fourth Division Award No. 4419. From the record before us, it appears that Claimant did not submit a Claim to the Railroad Retirement Board.


For those reasons, the Board has no jurisdiction over the dispute involved herein and the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1987.