

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That under the current agreement James A. Abrams was unjustly denied the right to fill the position of Labor Foreman at Raceland Car Facility and thus being denied the proper rate of pay for that position, and that John W. Layne was unjustly furloughed because the Carrier violated the applicable working agreement when it retained a junior employee to fill the position of Labor Foreman during a furlough which began on May 28, 1982.

2. That accordingly the Carrier be ordered to award the Foreman's position to James Abrams effective July 28, 1982 and that James Abrams be compensated at the Foreman's rate of pay from May 28, 1982. Further, that John W. Layne be compensated by the Carrier for all days he was unjustly furloughed.

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 employees 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.

Before addressing the merits of this Claim, we must first deal with Carrier's contention that the matter should be dismissed because it was not handled on the property in accordance with Section 3, First (i) of the Railway Labor Act. In essence, the argument is that the Organization failed to cite the specific Rule allegedly violated while the matter was under discussion on the property. We do not find this argument persuasive. From the first filing by the Organization, the Carrier knew precisely what the nature of its complaint was and the remedy being sought. Carrier was not misled in any fashion whatsoever.

Three employees with seniority on the Laborer's roster are principals in this matter. They are, with their status on the first date of Claim:

<u>Name</u>	<u>Seniority Date</u>	<u>Status</u>
Abrams, J. A.	8/14/64	Laborer
Layne, J. W.	8/21/75	Furloughed
Erwin, T. M.	7/06/76	Gang Foreman

Erwin had been appointed to the Gang Foreman's position on December 1, 1980. His appointment was made under the terms of Rule 21 of the Agreement, which reads:

"When selecting foremen or gang leaders, employees will be given consideration for promotion, and if selection is made from employees proficiency and seniority will govern, the company to be the judge of proficiency. It is the policy of the company to promote its own men and only when competent employees cannot be found in the ranks or when competent employees will not accept vacancies or new positions, will it be the disposition of the company to vary from this policy."

At the time that Erwin was promoted to the Foreman's position, there is no evidence that either Abrams or Layne sought the vacancy or that any challenges were laid down that it was in anyway contrary to the Agreement.

In the latter part of May 1982, a general force reduction occurred. A number of Laborers were furloughed, Layne among them. Abrams had sufficient seniority to remain employed, and Erwin, as a Foreman, was also continued on the job. The Organization viewed the retention of Erwin on the Foreman's position as affording him "super seniority." It contends that Abrams should have been allowed to bump him. If this had been permitted, Abrams purportedly would have been assigned to the Foreman's job, Erwin would have been furloughed, and Layne would have worked.

The Organization has attempted to show that Abrams was qualified to hold the Foreman's job. Apparently, he had previously held a Foreman's position without complaint. Erwin worked the supervisory position for almost two years before the layoff occurred. Abrams was not affected by the layoff. Rule 17 affords displacement rights to employees occupying positions that are abolished. Abrams was not in this category.

The Board's view of the record establishes the Laborer Foreman's position is a supervisory position. Rule 21 of the Agreement requires that the Carrier give consideration to proficiency and seniority if a selection for

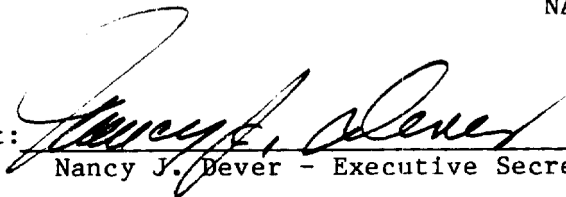
a Foreman's vacancy is made from the ranks of Laborers. We do not find any language in the Rule which permits or contemplates Laborers displacing into supervisory jobs. In fact, it seems from review of Rule 17, the displacement provision of the Agreement, that the reverse is true. The Agreement was not violated. There is no basis for Abrams to displace Erwin. Without such a displacement, the Claim of Layne also fails.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1987.