

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11584
Docket No. 11425
88-2-87-2-71

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

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rules 32 and 17, when they arbitrarily denied Grand Division Sheet Metal Worker, Mr. R. E. McIntyre, his right to displace a junior employe on Position No. 4014 headquartered at Argentine, Kansas.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Grand Division Sheet Metal Worker McIntyre in the amount of twelve cents (12¢) leadworkman differential pay for each hour he has been deprived of this pay since the abolishment of his former position and until he has been properly placed on Position No. 4014, headquartered at Argentine, Kansas.

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.

There is no dispute over the essential facts. Claimant's position was abolished on July 5, 1985. Claimant attempted to displace on Lead Position 4014 at Argentine, Kansas. Claimant had relinquished that same Lead Position at Argentine in February 1981, rather than stand for formal investigation. Carrier denied the Claimant's request for displacement of a junior employee. Carrier avers that Claimant is not qualified.

The Organization advances this claim on the grounds that the Carrier has violated Rule 32 (seniority) and Rule 17 which states in pertinent part that:

Rule 17

(b) "An employe whose permanent assignment has been abolished...may...exercise seniority over any junior employe."

It is the position of the Organization that the Claimant was denied his rights by the actions of the Carrier.

Carrier contends that the Claimant was neither qualified for the position in 1981, nor in 1985 when he was denied same. The Carrier denies the applicability of the above mentioned Rules arguing that Rule 44 prohibits "the indiscriminate exercise of seniority to displace junior employees...." Carrier emphasizes that Claimant received a notice of investigation alleging that he was failing to perform to standards on this same position in 1981 and voluntarily relinquished the position. The Carrier further notes that his discipline record since 1981 is not conducive to holding the Lead Position.

This Board has carefully studied the record. Substantial evidence presented by the Carrier clearly indicates that the Claimant lacks sufficient fitness and ability for the position. His discipline record and the explicit letters of supervisory personnel support Carrier's assessment that Claimant lacks fitness and ability to perform in the same Lead Workman position that he had held earlier and voluntarily relinquished. We find nothing in the record that disputes the Carrier's assessment and un rebutted assertions that Claimant is unqualified.

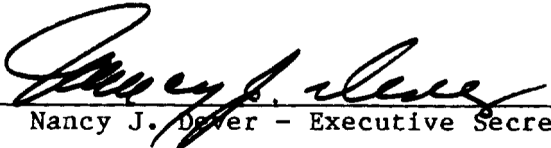
When Claimant voluntarily relinquished the position under the instant circumstances he surrendered his rights to occupy this same position through seniority. Seniority by Agreement does not require a check on qualifications, but assumes the employee is qualified. Herein, where the employee has renounced his qualifications rather than stand for investigation, he has self imposed a limitation on his seniority rights over a junior employee. As Claimant did not exercise acceptable service and relinquished the very same position, he cannot now claim seniority over a junior employee to a position he could not qualify to hold.

There is no evidence submitted that the Claimant has improved his performance or past behavior. The Claim must be denied under these very narrow circumstances where the same identical position is at issue.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1988.