

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12363  
Docket No. 12050  
92-2-90-2-162

The Secod Division consisted of the regular members and in addition Referee John C. Fletcher 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, under the controlling agreements, Sheet Metal Worker, C.F. Russell was wrongfully required to forfeit his Grand Division Seniority and right to recall as a Grand Division Sheet Metal Worker as result of a Carrier directive dated May 1, 1989, alleging Claimant failed to comply with Rule 24(c) after being furloughed as a Grand Division Sheet Metal Worker effective April 5, 1989.

2. That accordingly, the Carrier be ordered to reinstate Claimants Grand Division Seniority, right to recall as a Grand Division Sheet Metal Worker and any benefits which may have accrued during this forfeiture of seniority.

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.

The issue involved in this Docket is the same as that involved in our Award 12362 adopted this date in which the Claim of the Organization was sustained. We will follow that Award and sustain this Claim.

A W A R D

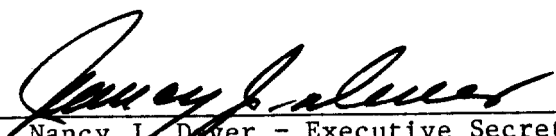
Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.

CARRIER MEMBERS' DISSENTS  
TO  
AWARDS 12362, 12363 AND 12364  
DOCKETS 12049, 12050 AND 12051  
(Referee Fletcher)

The Majority acknowledges at page 1 of Award 12362 that there are two distinct groups of Sheet Metal Workers on this property and each has different responsibilities and seniority. Such dual seniority was contractually created and was specifically subject to the requirements of Rule 24(c). Claimants seniority was as follows:

|                  | <u>Grand Division<br/>Seniority</u> | <u>Shop Seniority</u> |
|------------------|-------------------------------------|-----------------------|
| Claimant Graham  | 5/12/75                             | 9/24/70               |
| Claimant Russell | 8/26/74                             | 4/20/70               |
| Claimant Uhler   | 8/05/74                             | 2/05/73               |

When each Claimant was displaced from his Grand Division position, he exercised his separate "shop" seniority to a position at a distant location. Claimants did not file any notice pursuant to Rule 24(c).

The Majority's conclusion that Claimants were, "...involved in a force reduction, but (they) were not laid off" ignores the facts of record. The Organization, in its initial claim concerning Claimants Russell and Uhler, noted as their statement of facts that:

"The Claimant is presently furloughed from the Grand Division Sheet Metal Workers Seniority list..." (Emphasis added)

Claimants were laid off from their Grand Division positions. That they had other point seniority, and were able to exercise it,

does not change their responsibility to act pursuant to Rule 24(c) to protect their Grand Division seniority.

On the property and before the Board, the Organization had argued that because Claimants displaced to shops within the territory covered by their Grand Division positions, they were excused from Rule 24(c) requirements because such was considered to be, "at the same location" pursuant to the second paragraph of Rule 24(c). While the Organization acknowledges that Rule 24(c) does apply to Grand Division Sheet Metal Workers, the Organization's contention that:

"Location (as stated in the rule) as applied to the Grand Division, is the 'General Manager's territory.'"

was without evidence of any such practice, understanding or interpretation. The Majority in these decisions recognized this argument by the Organization but subsumed it within its conclusion that, "Carrier is misreading the specific and clear language of the Rule."

However, it is the Majority that has misread the rule. Claimants were "laid off in force reduction" as Grand Division Sheet Metal Workers. Again, at page 2 of Award 12362, the Majority acknowledges that:

"...forces were reduced in the Grand Division seniority pool..." (Emphasis added)

Since Claimants were laid off as Grand Division Sheet Metal Workers, Rule 24(c) required that they "...must...file...with the officer in charge...failing to comply...will result in forfeiture of seniority..." The requirement and the consequences are clearly stated.

Had the Majority's errant conclusion been the intent of the parties, then a journeyman, furloughed as such, but being able to exercise helper seniority to continue in active service could ignore the rule because he was not "laid off," whereas another journeyman having no other seniority would lose his journeyman seniority if he did not file. Such disparate results substantiate the error of these decisions.

Further, there would have been no need for the second paragraph of Rule 24(c) if any employee continuing employment in another classification could ignore the required reporting requirement. The lone exception provided is much more narrower than the excuse provided by the Majority in these decisions and would be superfluous.

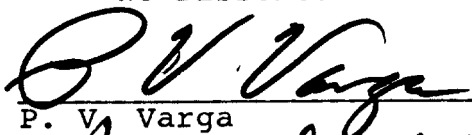
When Claimant Graham's Grand Division position at Winslow, Arizona was abolished, his exercise of his shop seniority to the Barstow, California shop was clearly NOT at the same location. Neither was Claimant Russell's move from Barstow to San Bernadino, California nor Claimant Uhler's move from Los Angeles to San Bernadino, California. Points hundreds of miles apart can neither logically nor geographically be "at the same location." Absent evidence that the parties had interpreted the word location to mean territory, the second paragraph of Rule 24(c) does not excuse Claimants from the notice requirements to protect their Grand Division seniority.

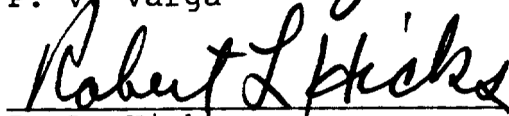
Second Division Award 10462 (1985), involving a different shop craft organization and the identical rule on this carrier pointedly noted:

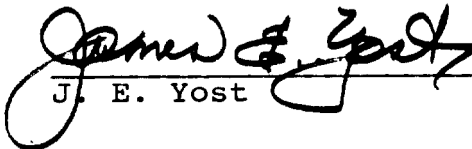
"Second Division Award 7770, which involved the parties to this dispute states: 'Under the clear and unambiguous language of Rule 24, we have no alternative but to deny the claim. See Awards 7469, 4336 and 257 (Second)' 20711, 17596, 15678, 12858 and 9457 (Third).' Furthermore, it should be pointed out that this Board 'cannot sit to dispense its personal brand of equity and industrial justice.' It must apply and interpret the Rules as written. See Third Division Award 20711. Accordingly, the claim is denied."

Its counsel should have been applied here.

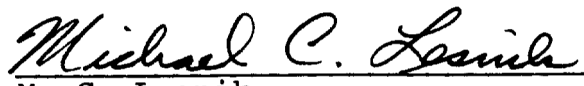
We Dissent.

  
P. V. Varga

  
R. L. Hicks

  
J. E. Yost

  
M. W. Fingerhut

  
M. C. Lesnik