NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 SECOND DIVISION Award No. 12511
Docket No. 12439
93-2-91-2-253

The Second Division consisted of the regular member and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen of the
(United States/Division TCU
(
(Southern Pacific Transportation
(Company (Eastern Lines)

STATEMENT OF CLAIM:

"1) That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling Agreement, particularly Rules 25 and 26, when they arbitrarily allowed a junior Carman to transfer from Houston to San Antonio ahead of senior Claimant Carman A. Herrera, beginning with July 16, 1990.

2) That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman A. Herrera at pro rata rate of Carman daily wages, all overtime, vacation rights, health-welfare, and all other benefits a condition of employment until claim is satisfactorily settled and violation corrected."

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 employe 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.

When the Claimant was furloughed from his job in Houston, Texas, there were no jobs available at San Antonio, but eight months later, there were vacancies at that location, and he applied for a job.

The Claimant was considered for a job at Houston, but was not hired.

Rule 25 advises that laid off employees who desire to accept employment elsewhere pending opportunity to return to further service with "these lines" may do so, but Rule 26 states:

> "When reducing forces, if men are needed at any other point, they will be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, ...Seniority to govern in all cases."

Carrier argues that Rule 26 does not apply to the Claimant since he had been on furlough for months, whereas Rule 26 applies only when reducing forces, and when the Claimant was reduced, there were no jobs available at other points.

In any event, the Carrier states that the Claimant was given consideration, but he advised that he did not intend to remain in San Antonio for very long and that he would not work on rest days. The Claimant denies that he made those statements. Further, Carrier states:

> "When transferring employees who have been furloughed for a long period of time, senior employees are considered first but are not always accepted over a junior employe."

Indeed, in its August 9, 1990 letter, Carrier states:

> "...when employees that are furloughed at one location request a position that may become available on other Divisions, they are given equal consideration. In this particular case, after all was considered, Carmen C. A. Meadows was most qualified." (Emphasis supplied).

Meadows was junior to the Claimant.

Initially, we consider the question of the statements assertedly made by the Claimant when interviewed for the San Antonio position. The two versions are opposite. The Carrier does not assert that the Claimant was not qualified, per se, for the position, but rather that his attitude left something to be desired. In any event, we feel that, under the Agreement language,

the Carrier has an obligation to demonstrate that an employee was not an appropriate candidate, and the evidence does not preponderate to the Carrier's benefit in this case based upon the conflicting documentation. This is not to say that we alter the long line of authority that the Carrier makes the initial determination of qualification and an employee may grieve that decision if dissatisfied. But, that concept arose under language that states that qualifications are the controlling factor. Such is not the case here.

Rule 26 states that the reduced employees are given preference to transfer. It then states: "Seniority to govern all cases." Yet, the Carrier departed from that test. See, for example the August 9, 1990 letter cited above.

Finally, we consider the "timing" argument. Carrier states that the job must be available at another point at the precise time that the forces are reduced. While that interpretation is not totally incongruous, we would require a stronger showing of intent than presented here in order to conclude that the parties intended to disenfranchise senior employees in the manner suggested here.

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 10th day of February 1993.