

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12568
Docket No. 12483
93-2-92-2-21

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

1. That the Kansas City Southern Railway Company (hereinafter referred to as Carrier or Company) violated the Current Controlling Agreement, Rules 24 and 27 in particular, but not limited thereto, between the International Association of Machinists and Aerospace Workers and the Kansas City Southern Railway Company when Carrier denied Machinist P. G. Tucker (hereinafter referred to as Claimant) the right to exercise his seniority and displace Machinist Chiartano, who is junior the Claimant in seniority, when the claimant was bumped from his job by a senior employee.

RELIEF REQUESTED

1. That the Kansas City Southern Railway Company allow Machinist Tucker to displace Machinist Chiartano, and pay the Claimant all wages he would have earned at the Lead Machinist rate of pay, had he been allowed to assume the position of Lead Machinist on April 15, 1991, as he had originally requested."

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.

The relevant events leading to this dispute arose on April 15, 1991, when the Claimant wrote to the Carrier and stated in pertinent part that he wished "to exercise my seniority of displacing" another Machinist who was working the Monday through Friday shift. On that same date, the Claimant's request was denied because the Machinist, although junior in seniority to the Claimant, was an appointed Lead Machinist, and, therefore, the Carrier asserted he was not subject to displacement pursuant to Rule 27 of the Agreement.

We agree with the Carrier in this dispute. It is apparent from the correspondence on the property that one of the Organization's main objections is the manner in which the Carrier filled the Lead Machinist position at the outset. Specifically, it asserts that the position should have been bulletined. That question, however, is not before the Board. However, we note that the Carrier's assertion that it has been a long-standing practice on the property to assign or appoint employees to the position of Lead Machinist based on fitness and ability was not refuted on the property.

The question before the Board is whether a junior employee, who has already been appointed to the position, may be displaced by an employee with greater seniority. With respect to this question, we hold that Rule 27 is controlling because it deals explicitly with the position of Machinist, while Rule 24 addresses general seniority. The key language, as applied to this claim, is contained in Rule 27(a). In pertinent part, the Rule states that Machinist "may be appointed" by the Carrier.

While the parties did not cite any relevant precedents, this Board notes that Fourth Division Award 4849 is helpful. The Award held in part that the "word appointment...has a common meaning in this industry. It refers to the Carrier exercising discretion over who it places upon a job. The word is used to contrast this method of filling jobs from the strict exercise of seniority". In light of this line of reasoning, the Board has concluded that the word "appointment" in Rule 27 would be rendered inoperative and of no

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meaning if the "appointed" employee could be displaced solely on the basis of "seniority".

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of September 1993.