

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12679
Docket No. 12449
94-2-91-2-243

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Northeast Illinois Railroad Corporation

STATEMENT OF CLAIM:

- "1. That the Northeast Illinois Railroad Corporation, hereinafter referred to as the Carrier, violated the applicable rules of the controlling agreement, specifically Rules 16, 29, 31 and 48 thereof, when it improperly and arbitrarily removed Western Avenue Diesel Shop Employee Electrician Lawrence R. Lovely, hereinafter referred to as the Claimant, from his regular assignment (tops or running repair) and reassigned him to shop jobs, trouble shooting and dead work.
2. That accordingly, the Carrier be ordered to compensate the Claimant eight (8) hours pay at the pro rata rate for each and every day commencing with April 16, 1990 that the Claimant is withheld from his tops or running repairs assignment and a junior electrician employee was assigned thereto. In addition, the Claimant is to be further compensated in the amount of eight (8) hours pay per day at the premium rate of time and one-half for each and every day commencing April 16, 1990, that he was arbitrarily assigned to perform shop jobs, trouble shooting and dead work in contradiction of agreement provisions.
3. That the Carrier be instructed to immediately restore the Claimant to his rightful electrician position on the light locomotive repair track (tops or running repair) which he held prior to April 16, 1990."

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.

This claim arises out of a charge that a change in the Claimant's regular work assignment since 1986 was made. As a result of the change, Claimant was no longer to be "working tops" on the light locomotive repair track but instead was assigned to shop jobs, trouble shooting, overhauling, repairing and rebuilding locomotive equipment.

The Organization charges that the Carrier violated the following rules.

Rule 16, Faithful Service

"Employees who have given long and faithful service in the employ of the company and who have become unable to handle heavy work to advantage, will be given preference on such light work in their line, if any, as they are able to handle and they will be paid the rate of the position to which they are assigned."

Rule 29, Discipline

"(a) An employee shall not be disciplined or dismissed from service, except as provided for in Rule 30, without a fair and impartial hearing, unless such employee shall accept such discipline in writing and waive a formal hearing..."

Rule 31, Committee

"The company will not discriminate against representatives (including committeemen) who are delegated to represent employees covered by this agreement..."

Rule 48, Non-discrimination

"The provisions of this Agreement shall be applied to all employees covered by said Agreement without regard to race, creed, color, age, sex, national origin or physical

handicaps, except in those cases where a bona fide occupational qualification exists..."

According to the Organization, the issue in this case center around the Carrier's reassignment of the Claimant from an electrician doing light locomotive repairs, to electrician repair work which is arguably more demanding, strenuous and physically taxing in nature and is generally regarded as "dead work." The Organization challenged the Carrier's reassignment of the Claimant and charged the Carrier with violating various Carrier rules. The Organization further maintains that the Carrier improperly, illegally, arbitrarily and capriciously removed the Claimant from his long-standing assignment of tops/running repair and reassigned him to shop jobs, trouble shooting, and dead work.

The Organization states that the Claimant was ranked number seven on the Carrier's system Electrician seniority roster and had consistently been assigned to "working tops" on the light repair track; that there was no recognizable justification for removing Claimant from an Electrician assignment he had held since June 1986; and that these actions imply some retaliatory or discriminatory measure.

The Organization notes that Claimant's time had not been split between other assignments such as working in the locomotive shop jobs and "working tops"; that Claimant routinely and on a daily basis did not work on other Electrician assignments; and that his primary duty assignment for some four years was to work the "tops" of the locomotive coming into the shop on the light repair track. Without question, a less strenuous job task than the one to which he was reassigned. Organization alleges there was the implementation of a formal secretive course of action that had been charted by Claimant's supervisors long before Claimant returned to work in April 1990.

Regarding Rule 16, the Organization states that in instances of this nature veteran status is of major importance and deserves more than a cursory glance. Organization points out that since Claimant's arbitrary reassignments, his former "tops" work assignment has been filled by an Electrician who is junior in age and seniority ranking to the Claimant; and Claimant has 35 years of railroad service and is, therefore, entitled to, or at least should be given the preference in work assignments; and that the Carrier had seen fit for four years to comply with the above-quoted provision of the General Rules Agreement.

Regarding Rule 29, the Organization states that the reassignment drastically changed Claimant's working conditions amounting to a demotion and an act of punishment. This subtle

effective type of discipline bypassed Claimant's rights and protection to which he is entitled under his contractual rights. Claimant was not notified of any wrongdoing, there were no charges made, there was no hearing held, but by virtue of changing Claimant's preferable position to an obviously less desirable and more demanding position, Carrier is clearly punishing Claimant in a very subtle manner, avoiding this rule in its entirety.

Regarding Rule 31, the Organization states that the Carrier was precluded from taking any discriminatory action against Claimant for Claimant was the duly elected representative of the Electrician employees working at the Western Avenue diesel shop. By his removal from previously assigned and preferred work assignment on "tops," Claimant as an individual was "discriminated" against.

Regarding Rule 48, the Organization states that under the prevailing circumstances and since Carrier has never given a logical reason for Claimant's reassignment, it becomes obvious Claimant has not been treated in the same manner as have other Carrier employees and accordingly, one, if not all, of the factors involving either age, representation status, employee's race and/or national origin had to be a part of local management's equation which ultimately caused Claimant to lose his "tops" Electrician assignment.

The Carrier takes the position that it did not violate any rules when it reassigned the Claimant in that when the Claimant was reassigned, it was to a position germane to his job title. The Carrier maintains that the Claimant's job title, location, position, hours and days of service remained the same. The Carrier also argues that the work assigned was less arduous than the Claimant asserts. The Carrier states that the Claimant has never made a contention that the Claimant was physically disabled or so aged as to be unable to perform certain electrical duties over others; and, therefore, there was no reason for the Claimant to have been considered by the Carrier to be unable to perform the tasks required of his position.

The Carrier asserts that assigning Claimant to "support shop" work between April 16, 1990, and July 7, 1990, performing repairs of an electrical nature such as working on solid-state equipment, duties classified as full-fledged Electrician's work, in no way violated the October 1, 1987 IBEW General Rules Agreement. Claimant's job location, position and hours and days of service remained unchanged, moreover, he continued to swear to FRA reports concerning periodic engine inspections and received the differential provided by IBEW Rule 63.

Carrier states that the description of the Claimant's position on September 1982 bulletin was general and did not put limitations on what Electrician duties he was assigned; that since Claimant has held the same position since 1982, and only in 1986 did Claimant state that "tops or running repairs" had been his regular assignment, this clearly demonstrates that tasks of an Electrician in Claimant's position can fluctuate.

Further Carrier argues that it has always been the practice at Western Avenue to assign employees various Electrician duties at management's discretion to effectively carry out the training of all employees in all facets of electrical work at the facility. Carrier argues that the Organization did not meet its burden of proof to establish that the Carrier violated any of the rules it cited.

The Board has reviewed the evidence and notes that the Claimant's reassignment was temporary. The Board also finds that nothing in the record supports the Organization's claim that the Claimant was treated in an arbitrary or discriminatory manner or that the Carrier was retaliating against the Claimant. The Board finds that the record established that the Carrier had a bona fide business reason to conduct an orientation and that this necessitated the temporary transfer of the grievant. Not only did the Organization fail to establish that the Carrier violated any of the above cited rules, the Board also finds that the Organization did not establish that the Carrier was without authority to reassign the Claimant within his own classification.

On the basis of the foregoing, this claim must be denied.

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 6th day of April 1994.