

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13699

Docket No. 13563

03-2-00-2-41

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 26 when they refused to allow Jeremy W. Basford his right to displace a junior Carman as an exercise in seniority.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Jeremy W. Basford for eight (8) hours at the straight time rate for each workday he was denied his displacement rights. Additionally, the carrier be ordered to compensate Jeremy W. Basford for any overtime payments accrued as a result of the carrier's actions.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

In Second Division Award 13698, the Board denied the Organization's claim which contended that the Carrier violated the Agreement when it placed certain designations concerning Carman and Painter on the 1999 seniority roster. In Award 13698, we noted that:

"... As the Carrier points out, the 1999 roster gives more information by further differentiating between "Prior Rights Painter" (designated with a single asterisk (*)) and "Painter" (designated with a double asterisk (**)). And, there is another designation for "Carman & Painter" (designated with a "#"). But for our purposes and as the Carrier points out, in and of themselves, these more detailed designations in the 1999 roster have not been shown by the Organization in this case to limit the ability of any employee to exercise their seniority. . . ."

While Award 13698, did not involve the exercise of seniority by employees on the roster, this dispute involves the attempted exercise of seniority for displacement purposes by an employee on the 1999 roster.

The 1999 roster shows the Claimant as a "Painter" with a December 1, 1997 seniority date. D. D. Rancourt is designated on that roster as a "Carman" with a January 11, 1999 seniority date. After being displaced from his position, the Claimant attempted to displace Rancourt as a Carman on June 3, 1999. The Carrier did not allow the displacement, stating that the Claimant (although senior to Rancourt) was not a qualified Carman.

Because this is a contract dispute, the Organization has the burden in this case to demonstrate a violation of the Agreement. The Organization has met that burden.

We decide these disputes by first determining whether clear contract language supports the Organization's position. See Third Division Award 34207 ("The initial question in any contract interpretation dispute is whether clear contract language exists to resolve the matter."). Here clear language supports the Organization's position.

Rules 26.1 and 12.5(a) state in pertinent part:

“Rule 26. Displacement

26.1 Employees whose positions are abolished, who are displaced by senior employees, or who fail to qualify pursuant to Rule 12, will exercise their seniority rights to positions held by junior employees within 48 hours from being affected by abolishment or displacement. . . .

* * *

Rule 12 Filling Vacant Positions

* * *

12.5 (a) Employees, after being awarded bulletined positions or exercising displacement rights, will be allowed up to 20 working days in which to demonstrate their ability to competently perform the job. Employees will be given full cooperation of supervisors and trainers in their efforts to qualify for positions.”

The Claimant was displaced from his position. On June 3, 1999, the Claimant attempted to displace the junior employee Rancourt, but was not allowed to do so. Rule 26.1 clearly allows the Claimant the ability to exercise displacement rights over junior employees (“Employees . . . who are displaced by senior employees . . . will exercise their seniority rights to positions held by junior employees within 48 hours from being affected by abolishment or displacement.”). Rule 12.5(a) clearly allows the Claimant the ability to demonstrate his qualifications in the position he attempts to displace into (“Employees . . . after . . . exercising displacement rights, will be allowed up to 20 working days in which to demonstrate their ability to competently perform the job.”). The Claimant was not given that ability to demonstrate his qualifications when he attempted to displace the junior employee Rancourt. The Organization has therefore demonstrated a violation of clear language of the Agreement.

It may be that the Claimant (who the Carrier contends is a Painter) will not be able to satisfactorily demonstrate his "ability to competently perform the job" for the Carman's position into which he attempted to displace as required by Rule 12.5(a). However, Rule 12.5(a) clearly gives the Claimant the opportunity to at least demonstrate his abilities.

A fundamental rule of contract construction is that when clear language resolves a dispute, other arguments attempting to explain the language or consideration of facts outside the language are irrelevant. Here, the language entitling the Claimant the ability to displace a junior employee and then demonstrate his "ability to competently perform the job" after displacement is clear. Because that language is clear, the Carrier's attempts to explain the differentiation between Painters and Carman on the same roster therefore cannot be considered.

In terms of remedies, the Board has discretion. We don't know if the Claimant will be able to perform the duties of the position he sought to displace into. We do know, however, that under the clear language of the Agreement he was entitled to make that displacement and then demonstrate his "ability to competently perform the job." For the remedy, the Claimant shall be allowed to displace into the Carman's position. If the Claimant can then demonstrate that he has the "ability to competently perform the job" as set forth in Rule 12.5, the Claimant shall then be entitled to be made whole.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 31st day of January, 2003.