

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13722
Docket No. 13622
03-2-01-2-25

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
(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 12.4(b) when they arbitrarily failed to recognize the seniority of Carman William M. Dostie in the daily assignment of work.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to allow Carman William M. Dostie his seniority rights as provided for in the aforementioned rule. Furthermore, the Carrier be ordered to compensate Carman William M. Dostie in the amount of eight (8) hours at the straight-time rate for the continued violation of this rule.”

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.

The instant claim, filed on July 11, 2000, protests the Carrier's refusal on Monday, May 15, 2000 to permit the Claimant, a Carman at the Waterville Shop, to displace a junior employee in his work assignment of upgrading boxcars rather than working on coal cars as the Claimant had originally been assigned. The claim rests upon the following language:

"Rule 12. Filling Vacancies

12.4 (b) In the daily assignment of work to employees awarded positions under this Rule, fitness, ability, and qualifications being equal, seniority will prevail."

The record reveals that both the Claimant and Carman McCaslin have seniority dates of January 24, 1967, however, the Claimant appears above McCaslin on the seniority roster. At the morning safety and assignment meeting on May 15, 2000, the Claimant was assigned to continue upgrading a coal car that he had been working on for several weeks and McCaslin was assigned to continue working on the boxcar he had been upgrading for the same time period. The Claimant had been regularly assigned to work on coal cars during the past two years. There is no dispute that such job is a lot dirtier and dustier than working on boxcars. That morning the Claimant asked his supervisor for the boxcar assignment given to McCaslin, attempting to exercise his seniority under Rule 12.4(b). His request was denied based upon the fact that both jobs were located inside the shop, and the Carrier understood that Rule to permit displacement between different job locations, outside vs. inside, rather than within the same location. On the property the Carrier also asserted that since the Claimant and McCaslin had worked on their specific cars for the past few weeks and were familiar with the set up and what needed to be done, they were each more qualified than the other to complete their particular job assignment, and thus, that their abilities were not equal with respect to this particular assignment.

The Organization contends that the language of Rule 12.4(b) is clear and permits an employee to exercise his seniority for daily work assignments, and makes no reference to the location of the job, only that fitness, ability and qualifications are equal. The Organization asserts that both Carman were equally qualified and able to perform the coal car/boxcar upgrading, and the Claimant was entitled to such preference of assignment due to his superior seniority. It avers that there was no hardship to the

Carrier for these employees to switch assignments, and argues that the Carrier changes employee assignments daily to cover absence and vacations. The Organization also takes issue with the Carrier's assertion that Rule 12.4(b) resulted from discussions in negotiations concerning the Organization's unsuccessful attempt to obtain two categories of job locations, presenting evidence from one of its committee members that the Organization never sought such change nor agreed to any limitation on the exercise of seniority with respect to job assignments based upon their location. The Organization relies upon Second Division Awards 13282 and 13452 as being dispositive of the issue on the property, noting that the Carrier did not assert its alleged practice of applying Rule 12.4(b) in this limited way until after the Board had upheld the Organization's interpretation of that Rule.

The Carrier argues that Rule 12.4(b) was never intended to permit an employee to bump from one inside job to another, but resulted from a settlement in negotiations where the Organization's attempt to obtain two categories of jobs, inside and outside, was unsuccessful but the Carrier agreed to permit bumping from outside to inside jobs, or vice versa, based upon seniority if all other qualifications were equal. The Carrier relies upon a written statement from Manager Berkshire indicating that the Carrier has applied Rule 12.4(b) since the signing of the contract in 1995 to permit senior employees to exercise their seniority in the morning as to inside or outside work if qualifications are equal. The Carrier also contends that ability was not equal in this case, since the Claimant was better equipped to perform the work on the coal car he had set up and been working on for several weeks than the boxcar McCaslin had set up, and that it would have taken each time to set up the other area and explain what needed to be done. The Carrier asserts that Rule 12.4(b) has never been used to permit employees to select a particular assignment within the same location for a one day period, which would be disruptive of the Carrier's right to assign work and adversely affect performance. The Carrier contends that both Awards relied upon by the Organization involve employee attempts to use Rule 12.4(b) to change from an outside to an inside job, and do not support the Organization's interpretation.

A careful review of the record convinces the Board that the language agreed to by the parties in Rule 12.4(b) concerning the application of seniority to daily work assignments is not limited by work location, but is specifically limited only by the employee's fitness, ability and qualifications to perform the job assignment. While Manager Berkshire offered a written statement asserting that the practice since 1995 was to permit bumping only between outside and inside jobs, the Organization disputed this assertion by a written statement from Local Chairman Dixon as to the content of

negotiations giving rise to Rule 12.4(b), the fact that the Carrier only began applying its own interpretation after the Organization had a sustaining award from the Second Division, and that the Organization never agreed to the Carrier's limited interpretation of Rule 12.4(b). Further, the fact that the Organization was forced to pursue claims to the Board concerning the seniority rights encompassed within Rule 12.4(b) in circumstances where an inside-outside assignment was being protested belies the Carrier's contention that the parties agreed to its interpretation during negotiations.

Second Division Award 13282, decided in May 1998, noted that the Carrier's sole defense was that the Claimant therein did not have equal fitness and ability to the junior employees on the disputed assignment. The Carrier did not raise the same limited interpretation of Rule 12.4(b) that it raises herein as that case involved an employee originally assigned work inside and then later transferred to outside work, an assignment from which he sought relief under Rule 12.4(b). In sustaining the claim, the Board noted that the Carrier had already determined that the Claimant was qualified to perform the inside job as it had originally assigned him to it, and that it was in error to ignore his right to bump a junior employee under Rule 12.4(b). Second Division Award 13452 was sustained on procedural grounds alone.

In the instant case the Board cannot accept the Carrier's argument that the Claimant was not equally fit, able and qualified to perform the upgrading work necessary on the boxcar as was McCaslin, or vice versa. While the reassignment would probably have required a brief familiarization with what had already been done and what remained to be done on the job, this is no different than assigning a Carman to fill in on a daily basis for an absent employee or one on vacation who had already started work on a particular freight car. While it may be more efficient to keep employees on the same assignment on an ongoing basis, this does not establish that they are not qualified to perform other work in the shop if their seniority and ability permit them that option under Rule 12.4(b). The Carrier did not contest the Claimant's superior seniority on the property.

Accordingly, the Board concludes that the Organization has sustained its burden of proving that the Carrier violated Rule 12.4(b) on May 15, 2000 when it did not permit the Claimant the right to bump McCaslin on the boxcar assignment. It is unclear the duration of that assignment, or at what point in the processing of this claim, the Organization contended that what the Claimant sought was a permanent, rather than a temporary, reassignment. Insofar as this claim seeks compensation for the violation on May 15, 2000 in the amount of eight hours pay at the straight time rate, it

will be sustained. Any other prospective remedy with respect to the Claimant's exercise of his seniority rights would be inappropriate.

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 10th day of June 2003.