Award No. 3482
Docket No. 3322
2-CofG-SMW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT A. F. L. - C. I. O. (Sheet Metal Workers)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Sheet Metal Worker L. B. Elsasser was furloughed and not allowed to exercise his seniority, when effective March 27, 1958, the Carrier made a reduction in the forces.

2. That the Carrier be ordered to restore L. B. Elsasser to service with compensation for all time lost in the amount of eight (8) hours each day at the applicable rate of pay beginning March 31, 1958, until restored to service.

EMPLOYES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, maintains at Macon, Georgia, a locomotive shop and tin Shop. All sheet metal workers in the employe of the carrier at Macon, Georgia are shown on a common seniority roster, copy of which is submitted herewith and identified as Exhibit A.

Sheet Metal Worker L. B. Elsasser, hereinafter referred to as the claimant, was employed by the carrier on January 14, 1946 and has worked continuously for the carrier without complaint, performing all work assigned to him coming under the scope of the sheet metal workers' agreement until furloughed as per Reduction of Forces Bulletin M-33-58.

Submitted herewith is a letter dated March 26, 1958, from the claimant, directed to Master Mechanic H. M. McKay, identified as Exhibit C.

This dispute has been handled on up to and with the highest designated officer of the carrier, with the result that he declined to adjust same.

The agreement between the Central of Georgia Railway Company and the sheet metal workers of System Federation No. 26, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier elected to reduce its force, following which it wrongfully denied the claimant his lawful rights under the terms of the agreement to exercise seniority over a junior employe on the seniority roster, covering craft of the sheet metal workers.

craft of work. The work of a "Pipefitter" is to all intents and purposes another class or craft of work. Further proof that this has long been recognized will be found in the sheet metal workers' special rules, on page 47 of the shop crafts agreement effective September 1, 1949, reading as follows:

"RULE 92

MISCELLANEOUS

"Sheet metal workers and pipefitters will not be required to interchange on work unless qualified, except in cases of emergency or when no others are available."

Claimant Elsasser in fact tacitly admitted he was not a qualified pipefitter because in his letter of March 28, 1958, to Master Mechanic McKay Mr. Elsasser said:

"I request that you allow me the opportunity to qualify on the job now held by Mr. D. B. Riley by allowing me a reasonable time in which to qualify."

If claimant was already a qualified pipefitter why then did he need time in which to qualify? The answer is obvious.

Carrier is required by law to operate efficiently and economically. Certainly we cannot do so if we are required to retain men who are not qualified to perform a certain class of work. We have not kept men in the service heretofore who were not qualified, as in this case. Up to this time, there has been no claim about a matter of this kind. **There is no semblance of merit to the claim, and it** should be denied in its entirety.

It is the further position of the carrier that the burden of proof rests squarely upon the shoulders of the petitioners. See **Second Division** Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others. Also see **Third Division** Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2776, and others — all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement.

Submitted herewith and identified as Carrier's Exhibit No. 1 through No. 23 is the major correspondence and data regarding this claim while being handled on the property. The claim has been denied at each and every handling by carrier representatives. The claim lacks any semblance of merit.

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.

The parties to said dispute were given due notice of hearing thereon.

When Claimant Elsasser entered carrier's service in January 1946 he was placed in a tinner position at the carrier's Macon Shops. Thereafter he con-

tinued to hold such a position and was carried on the single seniority roster for sheet metal workers (mechanics) at this location. On March 24, 1958 carrier issued a bulletin stating that as of "the close of workday, Thursday, March 27, 1958, the position of TINNER (now held by J. F. Hunnicutt) . . . . is abolished and force reduced accordingly. The incumbent has the right to exercise seniority over junior tinner, and Mr. L. B. Elsasser, being junior tinner employed, will be furloughed."

On March 26, 1958 Claimant Elsasser made written request that due to this displacement, he desired to be placed on the "job now filled by D. B. Riley in Pipe Shop . . ." Riley was junior to claimant on the noted single seniority roster at Macon Shops and held a pipefitter position. The master mechanic gave written reply on the same date advising that claimant was furloughed due to being the junior tinner employed, that he did not meet the qualifications necessary for employment as a pipefitter, and that his request was denied. The claimant then asked to be allowed a reasonable time to qualify on the job held by D. B. Riley This request also was denied. Hence the present claim.

The organization contends claimant is a qualified mechanic and that he was entitled to make the requested displacement on the basis of his greater seniority, in accordance with agreement Rules 25, 29 and 49. It is urged that had management permitted him to make such displacement, Rule 17 (a) would have come into play. The carrier replies that claimant is not qualified as a pipefitter, that it had no need for additional tinners at the time involved and that there is no contract requirement to place an employe in a position for which he is not qualified. Carrier asserts it is not obligated to train claimant for the work involved while paying him a mechanic's rate of pay. It also asserts that Rule 17 (a) has no application to the instant case.

Rule 17 (a) provides in pertinent part:

> "When new jobs are created or vacancies occur in the respective crafts the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined."

It must be apparent that the pipefitter position in which claimant sought to exercise displacement rights was not a new job or a vacancy, since it was already filled by D. B. Riley. Had this position been a vacancy it would have had to be bulletined, in which event there would have been no assurance at all that Claimant Elsasser would have been the successful applicant. We conclude that Rule 17 (a) did not apply in the subject instance and therefore that claimant was not entitled to be given a trial in accordance with that rule.

Nevertheless, had claimant been already qualified to perform the work of the requested pipefitter position, it could not be successfully contended that he was not entitled to make the requested displacement by virtue of his greater seniority. During the progressing of this claim the carrier repeatedly stated the position that Claimant Elsasser was not qualified to do pipe work. While the organization stated during this progression that claimant was a qualified mechanic, it did not contend he was qualified to perform pipefitting as such. Rule 85 defines a sheet metal worker as "any man who has served an apprenticeship, or has had four (4) or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work . . ." (Emphasis supplied.) It was not until the filing of its rebuttal brief with the Board that the organization sought to introduce that the claimant had

satisfactorily performed pipe work. This evidence consists of written statements from fellow employes, who advise that claimant has performed some pipefitting satisfactorily. These statements do not purport to show that claimant is qualified to perform all of the pipe work of the position in which he sought to exercise his seniority, however, Carrier states in its rebuttal brief that on occasions it gave Elsasser a "trial" on pipe work when it was "in a pinch" to have such work performed, but that it became apparent he could not do it. On the basis of the entire record on this phase of the case, we conclude that claimant did not already possess the qualifications to perform the work of the position occupied by D. B. Riley.

The question thus becomes whether, even in the absence of these qualifications, claimant nevertheless was entitled to the requested pipefitting position by virtue of his higher standing on the seniority rsoter. As previously noted, Rule 85 defines a sheet metal worker as a man who is qualified to perform sheet metal work (tinning) or pipe work. An employe does not have to be qualified in both types of work in order to be regarded as a mechanic in the sheet metal workers' craft. Rule 92 also makes a distinction between these types of work. The rule states: "Sheet metal workers and pipefitters will not be required to interchange on work unless qualified, except in cases of emergncy or whn no others are available." Both of the above provisions are classified in the agreement as sheet metal workers' special rules.

Rule 29 (Seniority) makes no distinction between sheet metal workers (tinners) and pipefitters as such, however. It simply lists "Sheet Metal Workers" as a single craft, although this provision sets forth divisions within the crafts of carmen, and of firemen and oilers. Consonant with Rule 29, sheet metal workers (tinners) and pipefitters are maintained on a common seniority roster at Macon Shops. Rule 25 states that when the force at any point or in any department is reduced, seniority as per Rule 29 shall govern. Rule 49 provides that "an employe whose job is abolished, or who may be displaced from his position by other causes, will be permitted to exercise seniority on any job occupied by a junior employe on his seniority list." Rules 25, 29 and 49 are general rules, in that they apply to all crafts and classes of employes . . . contained in the shop craft bargaining unit represented by System Federation No. 26.

There appears to be a conflict between the general rules cited above and the two sheet metal worker special rules previously indicated. If the general rules are followed in reducing forces, a tinner with no training or experience in pipe work could be permitted to displace a junior employe whose position involves only pipe work. But the special rules make a clear distinction between these two types of work. They contemplate that a mechanic in the sheet metal craft may not be qualified in both types of work.

In such a situation, we think the past practice in the administration of the agreement is entitled to great weight. The organization does not refute the carrier's statement that management has consistently followed the practice now complained of, and that no prior protest had been made concerning this practice. We think this shows mutual recognition that the agreement does not require that a sheet metal worker who is qualified in only one brach of the trade be permitted to displace during force reduction a junior employe occupying a position requiring proficiency in the other branch of the trade. We further think that this practice over the years indicates mutual agreement that the carrier's operational and safety requirements would be seriously jeopardized by the procedure of allowing an employe to bump into a position for which he is not qualified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3482

Award No. 3482 is erroneous for the following reasons:

(1) The majority admit that Rule No. 29 (Seniority) makes no distinction between sheet metal workers — then arbitrarily hold that there is such a distinction as between "tinners" and "pipefitters." Consti uting an attempt to revise this agreement, an authority this Division does not have in under the Railway Labor Act.

(2) The claimant was denied the right to show his ability to perform the work as provided for in Rule No. 17 (a) of the effective agreement between the parties.

Therefore we dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink