

Award No. 3577
Docket No. 3221
2-RDG-CM-'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. 109, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, Car inspector George Harrison was unjustly dealt with when not allowed to exercise his seniority in accordance with Rule 27.
2. That accordingly the Carrier be ordered to compensate him for the 8 hours lost as the result thereof.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector George Harrison, hereinafter referred to as the claimant, was regularly employed at Philmont, Budd Plant, Pennsylvania, tour of duty 7:00 A.M. to 3:00 P.M. Monday through Friday, rest days Saturday and Sunday.

On Tuesday, September 10, 1957, notice was posted notifying the claimant of the abolishment of his position, effective September 12, 1957, and in accordance therewith the claimant made a claim on a position at his seniority point, held by a junior employe, to take effect Friday, 7:00 A.M. September 13, 1957. Copy of Abolishment Notice and Claim submitted herewith and identified as Exhibits A and B.

Upon reporting for work on Friday, September 13, 1957, claimant was advised that his claim was received too late for the carrier to give notice to the junior employe being displaced. The claimant was sent home with the result he suffered a loss of eight (8) hours' pay.

This dispute has been handled with the carrier up to and including the highest officer designated to handle disputes of this nature, with the result that he has declined to adjust it.

The agreement effective January 16, 1940, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant is subject to be compensated for the time he was improperly held out of service as set

of System Federation No. 109 is without merit or justification and carrier requests the Board to so find and deny same.

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 were given due notice of hearing thereon.

By notice dated September 9, 1957 Carrier advised that Claimant Harrison's car inspector position, assigned hours 7:00 A.M. to 3:00 P.M. was being abolished effective with the close of his tour of duty on September 12, 1957. Petitioner contends the notice was not actually posted until September 10, but this point is not material to the decision in this case. By letter dated September 10, which the Organization states was mailed on September 11, Claimant Harrison advised the car foreman's office that effective at 7:00 A.M. on September 13, he was exercising his seniority in the position held by junior car inspector Wiley, with tour of duty 7:00 A.M. to 3:00 P.M. Both claimant's and Wiley's assigned work weeks were Monday through Friday.

It appears that claimant's letter was not received in the car foreman's office until 4:00 P.M. on Thursday, September 12, at which time the foreman telephoned the local chairman to advise that claimant's notice had been received too late to permit displacement of the junior employe on September 13. Carrier points out the claimant's letter was received one hour after junior employe Wiley had gone off duty. Carrier states that after the employes concerned had been notified of displacement and had been given opportunity to displace in turn, Car Inspector Harrison's claim on Wiley's position was allowed for September 14, 1957. The Organization requests 8 hours pay for claimant on the asserted ground that Carrier violate Rule 27 by depriving him of the opportunity to exercise his displacement rights on September 13.

The cited rule provides in pertinent part: "In case of a reduction of force or the abolishing of a position, employes affected shall be allowed to exercise their seniority rights in displacing junior employes in their respective seniority districts." Claimant Harrison therefore was contractually entitled to the position held by junior car inspector Wiley which was in the same seniority district.

While Carrier states Harrison's claim to this other position was received too late to notify junior employe Wiley, there is no showing in this docket that Carrier made any attempt to notify him immediately after receiving claimant's letter at 4:00 P.M. on September 12. No evidence is presented to explain Carrier's inability to promptly contact Wiley in the same manner as it contacted the local chairman at that time.

It appears to be Carrier's position that claimant's notice of desire to displace as of 7:00 A.M. on September 13 could have been received sufficiently in advance of that date so that all employes thereafter affected in a chain of displacements could be given prior notice to the end that all of these personnel movements could be effected simultaneously. Carrier states it has been the normal practice to make all of the changes at the same time. The Organization denies that this has been the practice.

The procedure urged by the Carrier may be in the best interest of all concerned but it is not a requirement set forth in the controlling agreement rule. We do not think we have the authority to incorporate this procedure into the rule. On the basis of the facts presented it is concluded that claimant's request to exercise his seniority was not received too late to notify Wiley, the junior employe affected, that he was being displaced as of 7:00 A.M. on September 13. The claim must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.