

Award No. 4900
Docket No. 4803-I
2-EL-I'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

THE ERIE LACKAWANNA RAILROAD COMPANY
R. J. KOCOWLOWSKI

DISPUTE: CLAIM OF CARRIER:

1. Carrier violates Rules 13(a), 20(a), (b), (c), 24(a) and (b) when it refused to allow promoted Carman Helper Ronald J. Kocowloski to displace on a Carman's position at Carrier's 51st Street Car and Locomotive Shop, Chicago, Illinois.

2. For time lost from November 13, to December 13, 1963 and for difference between Carman Helper's and Carman's rate from December 14 to December 22, 1963, at which time claimant was assigned to a vacant position of Car Inspectors at Carrier's Piggyback Yard, Chicago, Ill.

CARRIER'S STATEMENT OF FACTS: Ronald J. Kocolowski, hereinafter referred to as claimant, was employed by carrier as a laborer at carrier's 51st Street car and Locomotive Shop in Chicago, Illinois on December 30, 1958. Claimant was promoted to a carman helper on February 6, 1959 and was upgraded to a temporary carman's position on October 6, 1959, under a "Memorandum of Agreement Covering Upgrading of Carman Apprentices and Helpers to Positions of Carman" dated May 24, 1954. Claimant worked as carman on freight cars until May 11, 1963, at which time he was granted leave of absence to enter military service.

Claimant was released from military service and made himself available for work with carrier on November 13, 1963. On this date, he was advised verbally and by letter that while in military service there had been a reduction in force, effective September 12, 1963, and that there was no positions available to which he was entitled consistent with his seniority and qualifications.

On December 30, 1963, Local Chairman P. J. DiGuilio of the Brotherhood of Railway Carmen of America, claimant's duly authorized and accredited labor organization representative, instituted claim on behalf of claimant charging that (1) carrier deprived him of re-employment rights due under the Universal Military and Training Act and (2) violation of Rule 20(a), (b), (c), 24(a) and (b). Claim was denied by Car Foreman Wasson on February 6, 1964

to establish "carman mechanics" seniority. Moreover, even as an upgraded "carman mechanic" he is not qualified for the carman position he claims in this case. Under like circumstances in *Orban v. Reynolds Metals Co.* (D.N.J. 9/29/46) it was said concerning right to promotion that:

"Veteran not entitled to promotion to position of working foreman, even though he was eligible for such promotion on the basis of seniority, where the terms of a former bargaining agreement, binding upon him, provided that such promotions would be given to those who, in the employer's opinion, seniority and other qualifications considered, were best qualified to occupy the promoted position, and under the employer's findings, veteran was not qualified for the promotion."

Also in *Huffman v. Norfolk and Western Ry. Co.*, 71 F. Supp. 564 (W.D. Va. 1947) the following principle was established concerning seniority and qualifications:

"The provision of the Act that the veteran is to be restored without loss of seniority and to be considered as having been on furlough or leave of absence indicates that the time of his absence for military purposes is a credit to seniority only and entitled the veteran to all benefits, but those only, which depend on seniority, but seniority cannot, when thus credited, be equated to experience in relation to benefits based on experience."

It is paramount in this dispute that not only is it a fact that claimant did not have seniority or qualifications for the position claimed, he was not the senior provisionally promoted carman seeking this position. Carman Helper Fiedor was upgraded before claimant and if it is held that seniority among provisionally promoted carmen should be considered, claimant would not be entitled to the involved position in any event as he was upgraded later than Fiedor, who also claims the involved position and whose claim remains unsettled on the property at the writing of this brief.

In *Raulins v. Memphis Union Station Co.* (W.D. Tenn. 4/3/57), *Cortellacci v. Volco Brass & Copper Co.* (D.N.J. 4/9/47) and *Davis v. Memphis Union Station Co.* (W.D. 4/3/47) the principle was firmly established that:

"Provisions of union contract in effect when veteran was first employed and when he left for service, together with practice of employer, governing his rights insofar as they depend on seniority which is fixed by the contract."

fixes his status on return.

Carrier submits that when all conditions of the applicable agreement between the parties are considered, as they must, this claim is without merit and should be denied. Carrier's decision in this case was definitely not arbitrary, capricious or discriminatory and claimant has been treated strictly in accordance with that to which entitled under the rules agreement. He is entitled to nothing more and this board should so hold.

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

the service of Carrier as a Carman Helper, which was the first available position open, to which he was qualified.

Claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1966.