Award No. 5235
Docket No. 5016
2-B&M-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

BOSTON AND MAINE CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the provisions of Rule 26–Decision SF-66 of the current agreement when on April 17, 18, 19, 20 and 21, 1964, the Carrier set up Electrician Helper D. R. Pease as an Electrician to cover a day to day vacancy due to the illness of Electrician H. Ward.

2. That accordingly, the Carrier be ordered to compensate electricians R. C. Lockhart for April 17, 1964, A. C. Thompson for April 18, 1964, and April 19, 1964, T. W. Croteau, Jr. for April 20, 1964 and R. B. Washburn for April 21, 1964 (hereinafter called the claimants) for eight (8) hours each day listed above as a result of this violation.

EMPLOYES' STATEMENT OF FACTS: At East Deerfield, Massachusetts, the Boston & Maine Railroad, hereinafter referred to as the Carrier, operates a Diesel repair shop employing five electricians. On April 17, 1964 when Electrician T. W. Croteau, Jr., who is Local Chairman, reported for work at 3:00 P. M., he was advised by General Foreman P. G. Buker that Electrician H. Ward had reported off sick and he wanted to advance Helper D. R. Pease to cover the vacancy which would be for five (5) days.

Local Chairman Croteau advised Mr. Baker that it was his opinion such an advancement was not in accord with his understanding of the set-up rule. However, if he insisted he could not stop him, but if he were wrong, he could expect time claims from the regular electricians. See copy of statement by Local Chairman Croteau dated December 31, 1965, attached hereto as Exhibit A, which was furnished to Carrier as evidenced by copy of letter dated January 11, 1966 attached as Exhibit A–1.

Local Chairman Croteau telephoned General Chairman Collins about 8:30 P. M. on April 17, 1965, reviewed his conversation with General Foreman

position is not contemplated under the Agreement unless the employes can show that a furloughed electrician was available and should have been called for the work. In the absence of furloughed employes, the Carrier's action was proper.

The Carrier submits that the same man, Electrican Helper D. R. Pease, was set up to an electrician with the approval of the Petitioner in the following instances:

9/27/63 to 2/ 7/64
2/10/64 to 2/20/64
7/19/64 to 8/13/64

Please note that the Petitioner agreed to set up Mr. Pease on dates before and after date of claim. This certainly indicates that the Employes recognize that the Setup Agreement is applicable when the Carrier does not have a furloughed electrician available. The Organization's arbitrary refusal for the purpose of seeking overtime rates for regular electricians is contrary to the intent and spirit of the Agreement.

As previously stated, Local Chairman Croteau concurred with General Foreman Buker to set up Electrician Helper Pease. See Carrier's Exhibit B attached. Therein General Foreman Buker states that—". . . No exception was taken to this move. At approximately 9 P. M. same date Mr. Croteau called me at home, contending that his General Chairman, Mr. D. R. Collins, said that he couldn't use Mr. Pease on this vacancy."

Eight months later, in an afterthought, Local Chairman Croteau furnished a statement dated December 31, 1965, shown attached as Carrier's Exhibit C, reading in part:

"I did not agree to the upgrading of D. Pease."

Obviously, Local Chairman Croteau's statement is incorrect, because after agreeing with General Foreman Buker at approximately 4 P. M. on April 17, 1964, he then notified him at 9 P. M. that General Chairman Collins did not approve of the setting up of Mr. Pease. Had the Local Chairman not originally concurred in the setting up of Mr. Pease, it would not have been necessary to call General Foreman Buker five hours later and notify him that after talking with the General Chairman, the setup was not approved.

It is the Carrier's position that the Employes do not have the right to arbitrarily refuse to join in the setting up of a helper and their refusal in this case was contrary to the terms of the existing Agreement.

(Exhibits not reproduced.)

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.

The claim is that the Carrier violated provisions of Rule 26–Decision SF-66 of the current Agreement, when on April 17, 18, 19, 20 and 21, 1964, the Carrier set up Electrician Helper D. R. Pease, as an electrician to cover a day-to-day vacancy due to the illness of Electrician H. Ward.

The Employes contend that the advancement of Helper Pease was invalid because not agreed upon by the local chairman and local supervisor, nor finally approved by the General Chairman. Whether there was such local agreement is an unresolved issue of fact; the General Chairman refused his approval on the ground that "Decision SF-66 of Rule 26 was not intended to be used for that type of vacancy."

The record shows that this was not a day-to-day vacancy, but a definitely known vacancy of at least one week on account of illness of a regularly assigned electrician. Decision SF-66 provides as follows:

> "IT IS AGREED that within the Blacksmith, Boilermaker, Machinist and Electrician crafts, helpers (including regular or helper apprentices) will be set up to mechanics' positions, when necessary, provided:
>
> 1. Mechanics have been given consideration to qualify, in accordance with Rule 23, and amendments thereto, and
>
> 2. When management is unable to employ mechanics with four years experience."

The only requirements for setting apprentices and helpers up to mechanics' positions are stated in the above paragraphs numbered 1 and 2, and the claim does not allege that they or either of them have not been complied with.

Then under the heading "Order of setting up follows:" the order in which apprentices and helpers are to be set up, with some detail of the rights and procedures, is established by eight paragraphs. This part of Decision SF-66 is as follows:

> "Order of Setting up follows:
>
> (a) Regular apprentices who have completed six periods of 130 eight-hour days of service each, overtime excluded, of their apprenticeship.
>
> (b) Helper apprentices who have completed four periods of 130 eight-hour days of service each, overtime excluded, of their apprenticeship.
>
> (c) Regular apprentices who have completed four periods of 130 eight-hour days of service each, overtime excluded, of their apprenticeship.
>
> (d) Helper apprentices who have completed two periods of 130 eight-hour days of service each, overtime excluded, of their apprenticeship.

(e) If additional advancements are necessary, helpers with at least two (2) years' experience as such may be advanced.

(f) Apprentices advanced under the provisions of this memorandum will receive mechanic's rate of pay and will continue to accrue seniority as apprentices, and all time worked as mechanics will be counted on their apprenticeship time. Upon completion of the required number of days, they will be included on the seniority rosters of mechanics in their respective crafts.

(g) Helpers, when advanced in accordance with this Memorandum, shall receive the mechanic's rate of the craft in which they are advanced. A record will be kept of all time worked as a mechanic in such craft. They shall retain their seniority on their helper's seniority roster at the point from which advanced.

(h) It is agreed that the advancement of apprentices and helpers will be made by agreement between the Local Chairman and Local Supervisor. Such advancements will be subject to final approval by the respective General Chairman after receipt of Form PD-59 from Local Supervisor."

Thus the relative rights of various groups of apprentices and helpers are strictly established, and then protected by the required agreement of the local chairman and the local supervisor, subject to "final approval by the respective General Chairmen after receipt of Form PD-59 from Local Supervisor."

Paragraph (h) is clearly a procedural provision for the enforcement of the requirements of paragraphs 1 and 2 and the priorities and rights prescribed in paragraphs (a) to (g), inclusive. If it were intended as an absolute prerequisite it would appear as paragraph 3 after paragraphs 1 and 2 at the outset of the agreement, so as to constitute a third proviso limiting the agreement that helpers and apprentices "will be set up to mechanics' positions when necessary, provided:" etc.

Similar approvals of agreements were held not mandatory in Awards Nos. 1320, 2798 and 4605, where the provisions for them were not as obviously separate from the stated prerequisites as here.

The local chairman's initial approval is apparently to assure observance of the two prerequisites in paragraphs 1 and 2 and the priority provisions in paragraphs (a) to (g), since he is familiar with local conditions. But if, as alleged in the Employes' Submission, he refused his consent, it was not because someone other than Pease had the preferential right to the advancement, or because the prerequisites of paragraphs 1 and 2 of Decision SF-66 had not been complied with; for Pease was advanced under this provision on two prior occasions and a subsequent one, all within twelve months, one of them for over four months, and the others for 10 to 25 days, respectively, and it is not contended that the conditions had changed after the first two advancements, and again after the dates in question.

On the contrary, the Employes' Submission states:

"Local Chairman Croteau advised Mr. Buker that it was his opinion such an advancement was not in accord with his understanding

of the set-up rule. However, if he insisted he could not stop him, but if he were wrong, he could expect time claims from the regular electricians.

* * * * *

Local Chairman Croteau telephoned General Chairman Collins about 8:30 P. M. on April 17, 1965, reviewed his conversation with General Foreman Buker and was advised by General Chairman Collins that Decision SF-66 of Rule 26 was not intended to be used for that type of vacancy. He was advised that he should notify Mr. Buker that neither he (Croteau) nor Collins would approve the set up of Helper D. R. Pease."

Thus the local chairman realized that he was not entitled to prevent the advancement, and did not attempt to do so, but stated that a claim could be expected if the local supervisor was wrong in Pease's advancement. The same would of course be even more clearly true of the General Chairman's refusal of approval, which under Decision SF-66 is not to be concurrent with the advancement, but subsequently, "after receipt of Form PD-59 from Local Supervisor."

It is disputed whether in the first instance the local chairman approved the advancement; but if so, both his refusal and that of the General Chairman were based, not upon non-compliance with paragraphs 1 and 2 of Decision SF-66 or violation of its paragraphs (a) to (g), but upon the contention that "Decision SF-66 of Rule 26 was not intended to be used for that type of vacancy." Presumably by "that type of vacancy" they meant what the Employes' Submission calls "a day to day vacancy" due to an illness, although as noted above, it was actually a known vacancy of at least a week.

In any event, Decision SF-66 contains no provisions limiting it to any particular types of vacancy. If, as claimed, it was not intended to be used for this type of vacancy, the intention was abandoned, for it was not stated in the agreement. A written agreement supersedes all oral understandings and negotiations. It is well established that the words used by the parties in written agreements govern, and that neither a party nor this Board may insert provisions not included in the agreement.

The employes state in their rebuttal:

"Temporary vacancies of less than 30 days duration are to be and always have been filled from the Overtime Board and Electrician Ward's vacancy could and should have been filled from the Overtime Board. Thus Carrier had an alternative — fill the vacancy from the Overtime Board."

If, as thus contended for the first time in rebuttal, the Carrier had an alternative, that fact would not deprive it of the one followed. But no rule has been cited to that effect and a careful search of the Agreement fails to show any.

If, therefore, under Decision SF-66, either the local chairman's or the General Chairman's approval had been a prerequisite to Helper Pease's advancement, which as above shown it was not, he was not authorized to deny it, purely as a matter of veto, or on the invalid ground stated, but only be-

cause it was not necessary, or because one of the two further prerequisites of paragraphs 1 and 2 had not been met, or because Helper Pease was not the person entitled to advancement under the "Order of setting up" provisions. And if it had been based upon one of the stated prerequisites, it could not be sustained irrespective of the facts; for it is this Board's duty to sustain the agreements against arbitrary action by either party.

It follows that the claim must 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 21st day of July, 1967.

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