



Award No. 5933

Docket No. 5736

2-C&NW-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**DEPARTMENT FEDERATION No. 12,
RAILWAY EMPLOYEES' DEPARTMENT, A.F.L.-C.I.O.
(CARMEN)**

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago and North Western Railway Company violated the Controlling Agreement and the provisions of File 83-4-43 letter of instructions issued July 15, 1957 by Director of Personnel, T. M. Van Patten.
2. That accordingly the Carrier be ordered to compensate Carmen, William C. Pickens, for all days lost starting August 9, 1967 until he is returned to work.

EMPLOYEES' STATEMENT OF FACTS: In the first part of August, 1967, the Chicago and North Western Railway Company, hereinafter referred to as the carrier, made a substantial reduction in its force of carmen and foremen employed in its Clinton car shop, Clinton, Iowa. In effecting said force reduction, carrier abolished a number of jobs, including foremen jobs, with the result that senior employees had to exercise their displacement rights, with the junior employees, of course, taking the furlough.

Carman William C. Pickens, hereinafter referred to as claimant, was regularly employed by the carrier as a carman in its Clinton car shop. On August 8, 1967, carrier abolished his job, and he was accordingly furloughed. Also, on August 8, 1967, carrier abolished the job of foreman Eugene Hitz, and on August 9, 1967, superintendent of the car shop, John O'Neill, assigned Supervisor Eugene Hitz to a freight car repairer's job in carrier's Clinton car shop.

While it is true that foremen and supervisors promoted from the ranks of carmen continue to accumulate seniority as carmen and under certain circumstances may revert to the status of carmen, exercising their seniority as such, in the instant case there were foremen and/or Supervisors, junior in seniority as such, employed and working at Clinton, Iowa, holding seniority as a supervisor in the same district as foreman Hitz, whom Foreman Hitz could have displaced and continued working as a Supervisor; however, he did not exercise his seniority as a supervisor but, as stated heretofore, was as-

to the mechanics' craft. It will be noted that the letter of August 25, 1944 concerning foremen or mechanics in charge voluntarily returning to the mechanics' class, appears on pages 87-88 of the federated crafts' schedule agreement. However, the provisions of that letter are inapplicable to the present case, since Mr. Hitz did not voluntarily return to the mechanics' class. His rights are governed by the provisions of the letter of May 31, 1944 which provides in pertinent part:

**** if as a result of abolishing position the foreman can no longer hold a position as foreman on basis of his seniority as such, then his return to the mechanics' class should be in line with Rule 25, Crafts' Agreement."

Rule 25 of the federated crafts' schedule agreement provides in pertinent part:

"When forces are reduced or jobs are abolished, men affected will be given the privilege to place themselves according to their seniority. Only such men disturbed by reorganization or the abolition of jobs will be permitted to exercise their seniority under this rule."

Accordingly, on the basis of the letter of understanding of May 31, 1944 and Rule 25, Mr. Hitz was properly permitted to exercise seniority as a carman, and there is no basis for claim in behalf of the claimant.

During the handling of this case on the property, the local chairman and the general chairman contended that the letter of August 25, 1944, pertaining to foremen returning to the mechanic class of their own volition, applied in this case, because the claimant "**** did not exercise his right to displace a junior Foreman in his seniority district." However, it is not a fact that the claimant could have displaced a junior foreman. As pointed out above, there were no junior foremen whom the claimant could have displaced at the Clinton car shops, and he was not qualified to perform service as a foreman on the repair track, because he was not competent to supervise repair track operations, wrecking operations, and was not familiar with AAR billing procedures, one of the most important functions of a rip track foreman. He was not qualified to displace a younger supervisor except in the car shops, and there was no younger car shop supervisor whom he could displace. Accordingly, he had no alternative but to revert back to his former status as a carman. He did not revert to carman status of his own volition. Clearly, he is covered by the provisions of the letter of May 31, 1944 and rule 25 as specified in that letter, on account of his job being abolished and being unable to hold a position as foreman.

The claim is without merit and should be denied. In any event, there is no support for a claim for time lost beyond September 30, 1967, when the claimant failed to return to service when recalled.

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 waived right of appearance at hearing thereon.

On August 8, 1967, the forces at Carrier's Clinton Car Shops were reduced. The Foreman's position of Eugene Hitz, as well as other Foremen's positions were abolished.

The Clinton Car Shops perform heavy repairs on the Carrier's entire fleet of cars.

Foreman Hitz's position was abolished on August 8, 1967. On August 9 he was assigned to a freight car repairer's position at Clinton. The previous day, August 8, 1967, Claimant Pickens' position as Carman at the Clinton Shop was abolished and he was furloughed.

The issue is whether Carrier violated the Agreement by abolishing Claimant's position as Carman on August 8 and the assigning former Foreman Hitz to a Carman freight car repairer's position at the Clinton Car Shops on the following day.

Hitz had seniority as a Carman dating from September 15, 1957; and, as a Foreman from April 8, 1963. His seniority as Carman was greater than that of Claimant.

On behalf of Claimant compensation is prayed for, because of alleged Agreement violation from August 9, 1967 on which date he was furloughed until September 30, 1967, inclusive, on which latter date he terminated his employer-employee relationship with Carrier.

Resolution of the case is dependent upon interpretation and application of a letter of understanding from T. M. Patton, Director of Personnel addressed to Gen. Supt. MP and Gen. Supt. Car Department, dated July 15, 1957, which reads:

"We have had complaint from the General Chairman, System Federation No. 12 that the federated crafts' agreement is not being correctly applied on the property, as that agreement has been interpreted between this department and the General Chairmen or former General Chairmen of System Federation No. 12 when employees covered by the federated crafts' agreement are promoted to positions coming outside the scope of the agreement and subsequently return to positions covered by the agreement, either as a result of abolishment of their position or voluntary relinquishment of such position.

Agreements in effect with the federated crafts have been interpreted as follows:

1. Employees promoted from federated crafts to supervisory positions who as result of abolishment of their position are unable to hold position as supervisor and thereby revert to the class from which promoted are in possession of displacement rights in accordance with their seniority.
2. Employees promoted from positions coming under the scope of the federated crafts' agreement to supervisory positions, who as result of abolishment of position and failure to exercise seniority as supervisors, or on account of voluntary relinquishment of position, return to positions coming under the scope of the federated crafts' agreement, are not in possession of displacement rights and are not entitled to displace any junior employ in the craft. These employees, returning voluntarily to the class either as the result of giving up their position

or as result of position abolished and failure to exercise seniority to another position for which qualified are permitted to take any open position, and in the event there is no open position must wait until their seniority permits them to bid on a position. (Emphasis supplied.)

I have also been advised that at various points supervisory officers who are familiar with the proper application of federated craft rules in this respect are attempting to circumvent the rules by either holding positions open in order that when supervisory positions are abolished, the supervisors may come back and immediately place themselves in the position held open, or are circumventing the rules by creating new positions on which these supervisory officers could place themselves and at the same, or approximately the same time, abolishing other positions in the same craft or class, thereby in effect permitting a returning supervisor to displace a junior mechanic by creating one job and at the same time abolishing another job. I believe that this is a sharp practice which should not be condoned either by your or by this department.

This matter has previously been referred to by Mr. Steuber in his letter of December 10, 1956 to me and was the subject of the chief mechanical officer's Circular Letter No. 214 of September 7, 1944.

Will you please investigate this matter and take any action necessary to insure that supervisory officers understand the proper application of the schedule agreements in this respect."

It is Carmen's position that:

"While it is true that Foremen and Supervisors promoted from the ranks of Carmen continue to accumulate seniority as Carmen and under certain circumstances may revert to the status of Carmen, exercising their seniority as such, in the instant case there were Foremen and/or Supervisors, junior in seniority as such, employed and working at Clinton, Iowa, holding seniority as a Supervisor in the same district as Foremen Hitz, whom Foreman Hitz could have displaced and continued working as a Supervisor; however, he did not exercise his seniority as a Supervisor but, as stated heretofore, was assigned to a freight car repairer's job in the Clinton Car Shop by superintendent John O'Neill."

It is Carrier's position that:

"During the handling of this case on the property, the Local Chairman and the General Chairman contended that the letter of August 25, 1944, pertaining to foremen returning to the mechanic class of their own volition, applied in this case, because the claimant '*** did not exercise his right to displace a junior Foreman in his seniority district.' However, it is not a fact that the claimant could have displaced a junior foreman. As pointed out above, there were no junior foremen whom the claimant could have displaced at the Clinton Car Shops, and he was not qualified to perform service as a foreman on the repair track, because he was not competent to supervise repair track operations, wrecking operations, and was not familiar with AAR billing procedures, one of the most important functions of a rip track foreman. He was not qualified to displace a younger supervisor except in the Car Shops, and there was no young Car Shop supervisor whom he could displace. Accordingly, he had no alternative but to revert back to his former status as a carman. He did not revert to carman status of his own volition. Clearly, he is covered by the

provisions of the letter of May 31, 1944 and Rule 25 as specified in that letter, on account of his job being abolished and being unable to hold a position as foreman." (Emphasis supplied.)

There is no evidence of record that Hitz was unable to hold position and qualified to perform service as a foreman on the repair track, a position held by a junior Foreman, as contended by Carrier (NOTE: Hitz was a journeyman Carman.)

Carrier's averment that Hitz "was not qualified to perform service as a foreman on the repair track" is a selfserving conclusionary statement and has no evidentiary value.

While it is true that Carrier has the initial right to determine qualifications of its employees the determination is subject to rebuttal.

The record contains no admission or waiver by Hitz that he was not qualified to displace the junior foreman on the repair track. Therefore paragraph 1 of the July 15, 1957 letter of understanding, *supra*, is not material to the issue before us. Under paragraph 2 of said letter of understanding Hitz, in the posture of this case was "permitted to take any open position, and in the event there is no open position must wait until their seniority permits them to bid on a position". Hitz, therefore was disqualified from exercising displacement rights against Claimant since we find from our study of the record that Claimant's position was abolished on August 8, 1967 for the purpose of creating an open position for Hitz on August 9. We agree that the statement Carrier's Director of Personnel, in the July 15, 1957, letter of understanding, is descriptive of the action taken by Carrier in this case: "I believe that this is a sharp practice which should not be condoned either by you (the addressees) or by this Department."

A W A R D

Paragraph 1 of the Claim sustained.

Paragraph 2 of the Claim to the extent that Claimant be compensated in the amount he would have earned had he remained in Carrier's employ in the period from August 9, 1967 to September 30, 1967, inclusive, less any other earnings he received from any other employer during that period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May, 1970.