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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6458
Docket No. 6303
2-B&O-EW-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: { System Federation No. 30, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electricians)
 {
 { The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company deprived Electrician N. F. Billings seniority and employment rights as such, when they removed his name from the Electrician's Seniority Roster, Western Region, Point 15, in violation of Rule 24 and 28 of the Agreement in point.
2. That accordingly the Carrier be ordered to reinstate Claimant Electrician N. F. Billings to the Electrician's Seniority Roster, Western Region, Point 15, Washington, Indiana with all seniority and employment rights accruing therefrom.

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.

In May 1966, claimant was an electrician's helper. He was assigned to fill a temporary vacancy for which no bids were received by electricians with seniority. Claimant completed the required 1040 hours as a tentative electrician in December 1966, and continued to fill the temporary vacancy until December 1970. At that time, the vacancy was declared to be permanent as the result of correspondence from electrician Green who had seniority. The position was advertised and furloughed electricians were recalled according to seniority. Claimant requested and was granted a transfer from the M of E Department into the Maintenance Of Way, as a sheet metal worker. The Organization states that this transfer was requested, "In the light of the complaints initiated by electrician Green, a senior employe, - - -", Employees' Submission, p. 4.

In order to maintain continuous employment relationship with the carrier, claimant was granted a department release, otherwise he would be regarded as a new employee, Employees' Submission, p. 5. The Organization argues that when granted the department release, claimant was at the same time released as an/employee filling a temporary vacancy and could thereafter bid on a permanent vacancy with his seniority, under Rules 15 and 24.

After claimant transferred to sheet metal worker, electrician Green apparently changed his mind and did not bid to fill the permanent vacancy. On January 7, 1971, carrier hired an electrician to fill the vacancy. On January 25, 1971, this claim was filed.

The carrier has argued that claimant's name was dropped from the electrician's seniority roster when he started to work as a sheet metal worker. The bulletin for the electrician's vacancy was posted December 4, to expire on December 8. Claimant voluntarily left his position on December 6. The carrier insists that there is no rule or practice which would permit claimant to retain his seniority as electrician in the department he vacated, under these facts. However, the carrier agrees that an employee can protect his seniority on one roster when voluntarily vacating a position on that roster to take a position in another craft on another roster, under Rule 18. But, the carrier contends that claimant did not seek and obtain proper authority for transfer by obtaining a bona fide leave of absence under Rule 18, to protect his seniority as an electrician, Carrier's Submission, p.3.

The facts indicate that claimant acted quickly to assure continuous employment for himself by transferring voluntarily before the time expired for a senior electrician to bid the permanent vacancy. When no senior electrician bid for the permanent vacancy, claimant wanted to get back to electrician because he would then have the security of being senior electrician. The burden of proving that he could do this is upon the claimant. None of the rules discussed by the Organization supports this contention. No practice has been stated which would give such meaning to a department release.

Rule 18, headed Leave of Absence, is interpreted (as stated in Rule) to provide for a leave of absence to engage in other employment if the employee obtains the joint consent of the proper official and committee representing his craft. Otherwise the employee's seniority is forfeited.

The Organization has not offered evidence to overcome the requirements of Rule 18, as interpreted therein. Claimant did not apply for a leave of absence and obtain the joint consent required to protect his seniority on the electrician's roster.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1973.