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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No.6509
SECOND DIVISION DocketNo. 6320
2-N&W-CM-'73

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

Parties to Dispute: (System Federation No. 16, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Norfolk and Western Railway Company

Dispute; Claim of Employes:

(1) That the Norfolk and Western Railway Company violated the Memorandum of Agreement, October 29, 1957, when they promoted Car Helpers, A. M. Littlepage and R. E. Parson to Upgraded Carmen, instead of Carmen Apprentices, Donald D. Tawney and Robert N. Shreffler on October 14, 1970.

(2) That the Norfolk and Western Railway Company be ordered to compensate Carmen Apprentices Donald D. Tawney and Robert N. Shreffler for October 14, 1970, eight (8) hours at Carmen's applicable rates of pay, and thereafter until adjusted.

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.

Claimants, Shreffler and Tawney, classified as Apprentice Carmen with in service seniority dates of March 19, 1968 and August 1, 1968 respectively, were promoted to Upgraded Carmen on December 1, 1969. Parson and Littlepage, classified as Carmen Helpers with in service seniority dates of June 1, 1968 and April 16, 1969 respectively, were also promoted to Upgraded Carmen, Parson on June 1, 1968, and Littlepage on April 17, 1969. In a reduction of forces by Carrier on July 23, 1970, all four employes were furloughed. Parson was recalled as a Carman Helper on September 24, 1970 and Littlepage on September 28, 1970. Shreffler and Tawney were recalled as Carmen Apprentices on December 1, 1970. Shortly after, if not immediately following their return to work, all four employes were assigned to Upgraded Carmen work and paid accordingly.

On page 8 of its Rebuttal to Carrier's ex-parte submission, Petitioner states:

> "The furlough and recall are not being contested. What is being contested is the Carrier's method of upgrading Apprentices and Helpers before and after the furlough, which action has obviously caused the Claimants' monetary loss, and is in direct violation of the October 29, 1957 Agreement." (Emphasis supplied.)

We are at a loss in our effort to grasp the rationale underlying this claim. If there was no breach of the Agreement with reference to furlough and recall, on what could there be found a basis for a finding of monetary loss suffered by Claimants? Immediately upon recall they were restored to the Upgraded Carmen classification.

The thrust of Petitioner's contention is that Carrier violated the procedure of Paragraph 1 of the October 29, 1957 Memorandum of Agreement between the parties when it promoted Shreffler and Tawney to Upgraded Carmen upon their return from furlough. If this position is valid, then it must follow that the restoration of the Claimants to the higher classification was equally violative of the terms of the referred to Agreement. The only remedy would then be to demote all four of the employes to their regular classifications and renew the process of joint selection "by the General Chairman and Local Management" of Apprentices and Helpers for Upgrading; at best a futile gesture, even if this were proposed by Petitioner, which it was not. It is noted that Petitioner may not, at this late juncture, and indeed it did not clearly, protest the Upgradings of Parson and Littlepage in June, 1968 and April 1969 respectively.

With the assent of the Petitioner, it must be held that Parson and Littlepage were properly recalled on September 24 and September 29, 1970. Rule 8 (D) of the Controlling Agreement, effective September 1, 1949 provides:

> "In restoring forces the Company will call furloughed men in the order of their seniority (senior men to be called before junior men) and will return them to their former positions if possible; ..." (Emphasis supplied.)

Paragraph 8 of the October 1957 Memorandum of Agreement reads:

> "8. In reduction of force for any cause, apprentices, helpers, and non-qualified carmen temporarily promoted to positions of mechanics will be reduced before qualified mechanics are laid off and all such reductions shall be in reverse order of their promotion." (Emphasis supplied.)

It would appear from the quoted provisions of the Controlling Agreement and the Memorandum that the intent of the Parties was to restore recalled employes to the position they were in when furloughed, if possible; and that some seniority status in the upgraded position be afforded those promoted. Carrier's action was consistent with these concepts.

Petitioner relies heavily upon this Division's Award 4708. The facts of that case were summarized as follows:

> "The Organization states that five Claimants were properly upgraded on June 5, 1962 in accordance with the terms of Article III of the New York Agreement of June 4, 1953. Thereafter it alleges that the Carrier violated the above named Article III when it demoted the Claimants to their Classification of Carmen Apprentices and Carmen Helper respectively and proceeded to recall five furloughed Carmen Helpers to the service as upgraded Carmen in place of the five demoted Claimants."

No such situation exists herein and therefore the matter is clearly distinguishable and the holding therein is not applicable hereto.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1973.

LABOR MEMBERS' DISSENT TO AWARD NO. 6509,
DOCKET NO. 6320

The majority recognized the fact that upgraded carmen apprentices Shreffler and Tawney, as well as upgraded carmen helpers Parson and Littlepage, were furloughed on July 23, 1970. The Employes agree that this was in accordance with Paragraph 8 of the October 29, 1957 Memorandum of Agreement.

The majority also recognized the fact that Parson was recalled as a carman helper September 24, 1970, and Littlepage was recalled as a carman helper September 28, 1970. Shreffler and Tawney were recalled as carmen apprentices December 1, 1970.

Shortly after all four employes were recalled, they were promoted to upgraded carmen. The Employes agree that the recalling of Parson and Littlepage as carmen helpers, and Shreffler and Tawney as carmen apprentices, was in accordance with Rules 7 and 8(D) of the controlling agreement. However, at this point the Labor Members of this Board part company with the majority, i.e., the promoting of carmen helpers to upgraded carmen before carmen apprentices.

The majority tried to justify their position by saying:

1. "* * * It is noted that Petitioner may not, at this late juncture, and indeed it did not clearly, protest the Upgradings of Parson and Littlepage in June, 1968 and April 1969 respectively."

The majority was furnished awards of this Board dealing with practice. Awards 1898 and 2210 read in part:

> "Consent and practice cannot be considered as an agreed interpretation of the rule, since the rule is too plain to require or permit such interpretation. * * *."

Award No. 4591 reads in part:

> "Past practice does not now estop the Organization from enforcing a contractual provision."

The contractual provision of the agreement, in the instant case being paragraph 1 of the October 29, 1957 Memorandum of Agreement, reads:

> "1. In the event of not being able to employ Carmen who have had four (4) years experience at Carmen's work, regular and helper apprentices will be selected jointly by the General Chairman and Local Management to be promoted to positions of Carmen. If more carmen mechanics are needed, helpers will be jointly selected as indicated above to be promoted to positions of carmen mechanics."

It is clear that in 1968, 1969 and 1970, the Carrier did not comply with paragraph 1 of said agreement in that regular apprentices were not promoted and/or upgraded before carmen helpers.

Also, the General Chairman was not consulted, as provided by paragraph 1 of the October 29, 1957 Memorandum of Agreement.

2: The majority tried further to justify their position by Rule 8(D) of the controlling agreement reading:

> "(D) In restoring forces the Company will call furloughed men in the order of their seniority (senior men to be called before junior men) and will return them to their former positions if possible; * * *."

and in particular:

> "* * * and will return them to their former positions if possible; * * *."

In relying on Rule 8(D), the majority overlooked Rule 7. This Board has held that a labor agreement must be construed as a whole. In Award No. 4130 it was stated:

> "* * * Moreover, it is generally recognized in the law of labor relations that a labor agreement must be construed as a whole. Single words, sentences or sections cannot be isolated from the context in which they appear and be interpreted literally and independently, irrespective of the obvious or apparent intent and understanding of the parties as evidenced by the ENTIRE agreement. Stated differently, the meaning of each sentence or section must be determined by reading ALL pertinent sentences or sections together and coordinating them in order to accomplish their evident aim. See: Frank Elkouri and Edna A. Elkouri, HOW ARBITRATION WORKS, Revised Ed., Washington, D. C., BNA Incorporated, 1960, pp. 207-208 and cases cited therein."

Therefore, in reading Rule 8(D) in conjunction with Rule 7, Rule 7 reading in part:

> "(A) (1) All employees governed by this agreement shall have their seniority established as of the date of beginning service; their seniority shall be confined to one classification in their respective crafts at the respective points where they are employed; * * *.

"* * *.

(2) Classifications within the various crafts shall be as follows:

CLASSIFICATIONS

Craft	Mechanics	Helpers	Apprentices
* * *.			
Carmen's	Carmen (Locomotive and Passenger; and Freight)	Carmen helpers	Carmen apprentices"

it will be found the only seniority Parson and Littlepage had was that of carmen helpers. Shreffler and Tawney's seniority was that of carmen apprentices. There is no provision in Rules 7, 8 or any other rule(s) of the agreement that provides for promoted carman helper or promoted carman apprentice seniority rosters. Therefore, for any one of these employes to return to their status of an upgraded carman, they must have been upgraded in accordance with paragraph 1 of the October 29, 1957 Memorandum of Agreement, i.e.: First, regular and helper apprentices. Second, if more mechanics are needed, helpers to be promoted. Third, if promoting regular and helper apprentices and helpers do not provide sufficient men, then under paragraph 6 of said Memorandum of Agreement, provides that men who have had experience in the use of tools may be employed. All

of the above to be done jointly by the General Chairman and local Management. In the instant case the provisions of the heretofore agreement was not complied with.

Therefore, Award No. 6509 is palpably erroneous.

W. O. Hearn

D. S. Anderson

E. J. Haesaert

E. J. McDermott

G. R. DeHague