Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8385
Docket No. 8095
2-CMStP&P-BK-'80

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Blacksmiths)
(Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employes:

1. That, in violation of the current agreements, the Carrier improperly and unjustly withheld Blacksmith A. J. Magnuson from service when on September 28, 1977 it denied him his contractual right to exercise seniority by displacing a junior employee.

2. That accordingly, the Carrier be ordered to compensate Blacksmith A. J. Magnuson at the prevailing rate of pay for eight (8) hours on September 28, 1977.

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.

The salient question before this Board is the coordinative application of the May 1, 1976 Memorandum of Agreement. It is uncontested that Claimant, who was regularly assigned to the Davies Yard Rip Track in Milwaukee, was apprised before the close of work on September 27, 1977 that his job was abolished due to a force reduction. As such, he was eligible to exercise displacement rights pursuant to Agreement Rules 27 and 31 and the terms of the May 1, 1976 Memorandum of Agreement and in fact, advised the foreman at the Milwaukee Forge Shop on September 28, 1977 that he wanted to displace a junior employee. The May 1, 1976 Memorandum of Agreement is referenced as follows:

> "As between the undersigned, it is agreed that when forces are reduced or job abolished, employees affected may place themselves according to their seniority, provided they are qualified to perform the work of the position.

"Employees exercising displacement rights will do so within five calendar days after being affected by force reduction or job abolishment of position.

This Agreement is effective May 1, 1976 and shall remain in effect until revised or annulled in accordance with the procedures prescribed in the Railway Labor Act as amended."

Carrier contends that he was denied immediate displacement right to this position since he applied for it after the start of the shift and without advanced notification. It argues that his late notification, if acceded to, would be contrary to observable practice and administratively burdensome and unfair to other employees. Claimant disputes this position and contends that there is no Agreement language or practice requiring advanced notification. He asserts that he applied for this position before the start of the shift.

In our review of the Agreement Rules applicable to this case, namely Rules 27 and 31 pertaining to Reduction in Force and Seniority, Claimant was plainly eligible to exercise displacement when his position was abolished on September 27, 1977. Our correlative analysis of the May 1, 1976 Memorandum of Agreement does not reveal that advanced notification is specifically or for that matter implicitly required, although, admittedly some form of controlled administrative procedure would be desirable to facility orderly displacement applications. In view of the parties diametrically opposite positions on this interpretative issue and the lack of any clear and verifiable implementing standards, this Board must judically assess the applicable Agreement language.

We concur with Carrier that advanced notification is administratively warranted to avoid needless confusion, but we do not find that it persuasively demonstrated that this was the accepted practice on the property. The second paragraph of the May 1, 1976 Agreement (Supra) simply requires that affected employees will exercise displacement rights, if they choose, within five calendar days after the force reduction or abolishment of position. It does not postulate some definable measure of advanced notification. If the employee does not exercise his displacement rights within five calendar days, he loses this opportunity for displacement employment. As an appellate body, we cannot disregard the presence and force of clear and unambiguous language. We must give it its intended effect. We are not convinced by the record that this language was mutually construed and observed so that advanced notification was an integral and indisputable part of this provision. We would be rewriting the Agreement.

Claimant's job was abolished on September 27, 1977 and he notified Carrier within the required five calendar days that he wanted to displace a junior employee. The May 1, 1976 Memorandum of Agreement is written in unmistakable and explicit language and we cannot give it a meaning other than expressed. We recognize, of course, than an intelligent administrative procedure would in all likelihood reduce personnel problems, but we cannot interpolate by judicial interpretation an advanced notification rules, that is not supported by the record. We will sustain the claim.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1980.