

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Mr. L. G. McGregor, Stationary Engineer, Brainerd, Minnesota, was arbitrarily prevented from exercising his seniority and withheld from service November 29, 1978 until awarded a position bulletined on December 26, 1978.
2. That, accordingly, the Burlington Northern Inc. be ordered to compensate Mr. L. G. McGregor for all time lost at the pro rata rate, including holidays and the national wage adjustments, while being withheld from service.

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 Claimant was employed as a Stationary Engineer until November 28, 1978. This is a position which requires a state license. The undisputed record shows that the Claimant did not renew his state license, despite written reminders from the Carrier on July 5, 1978 and November 3, 1978 to do so. Consequently, by letter dated November 28, 1978, the Carrier advised the Claimant that he was "relieved" of his duties since he had not renewed the license in "voluntary action" on his part.

Rule 24 (f) of the applicable Agreement reads as follows:

"(f) For employees under Firemen and Oilers' Agreement, district rosters will be established with two classes of employees. Class 'A' will include all Stationary Engineers and Firemen, and Class 'B' will include all other employees under the Agreement. Employees who hold only Class 'A' seniority now, and employees who

"are hired in Class 'A' in the future, will also be placed with the same seniority date on the district Class 'B' roster. Except where it would involve a change in residence, employees working in Class 'A' must exhaust their rights in that class before exercising seniority in Class 'B' and return to Class 'A' whenever work is available to them."

Claimant attempted to exercise his seniority in a Class 'B' position, but this was denied by the Carrier. However, there was a Class 'B' position bulletined on December 26, 1978, on which the Claimant bid and was subsequently placed.

The essential issue here is whether the Claimant had the right to displace a Class 'B' employee as of his departure from the Class "A" Stationary Engineer position on November 29, as claimed by the Organization, or whether he did not have displacement rights, as argued by the Carrier.

Rule 24 (f) clearly establishes seniority rights for Class "A" and Class "B" employees, with certain overlapping seniority rights for those in Class "A" as indicated by the rule. Rule 24 (f), however, does not spell out the circumstances under which displacement or "bumping" may occur. As the Carrier points out, this is covered in Rule 20 (c), which reads as follows:

"(c) The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping' will be permitted only when existing assignments are cancelled, in which case the employee affected may, within five (5) days, displace any employee his junior whose position he is qualified to fill."

This rule makes it clear that an employee may displace another employee "only when existing assignments are cancelled" -- that is, when an employee loses his position based on a change in the work force. The Board finds that this is not applicable to the circumstances under review here. The Claimant, for whatever reason, chose to disqualify himself for the position of Stationary Engineer by failing to renew his license. There is no question here of the "cancelling" of an assignment, and thus the Claimant was not in the situation contemplated under the displacement provision of Rule 20 (c).

The Organization relies on Rule 13 (d) of the Agreement to support its position, but this rule deals with employees "reduced to a Laborer by reduction of force". No reduction of force was shown to be involved in the circumstances involving the Claimant, and the rule and its interpretations are of no relevance here.

Displacement rights in this Agreement, as commonly found elsewhere, are confined to those involuntarily losing their current positions and/or status. The Claimant here, by failure to renew his license, does not earn the opportunity to claim such rights for himself. He was not denied the right to bid on an open position, and there are no rule provisions to afford him a position between his voluntary relinquishment of one position and his successful bid on another position.

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Award No. 8515
Docket No. 8441
2-BNI-FO-'80

A W A R D

Claim denied.

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 3rd day of December, 1980.