

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

Parties to Dispute:

(Brotherhood Railway Carmen of the United States
and Canada
(
(Soo Line Railroad Company

Dispute: Claim of Employees:

Carmen Sylvester Jakusz, Stevens Point, Wis. is claiming compensation at carmens rate of pay for 4 additional hours straight time pay for each Saturday and Sunday required to work and 8 hours straight time pay for each Wednesday and Thursday not permitted to work; commencing Aug. 15, 1977 and continuing until settlement of claim, in regard to the Soo Line R.R. Co. violating Rule 15 and 27 of our Shops Craft Agreement.

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 December 8, 1975, Carman K. Laszewski sustained a personal injury. He was hospitalized from such date until December 12, 1975, and the next day he returned to work, tying and untying piggybacks. His condition had been diagnosed as "back strain with a potential herniated disc", and he was unable to handle the job. He was allowed to work half days for awhile and continued to have difficulty with his back. On March 18, 1976, his condition was definitely diagnosed as a herniated disc, and he was advised not to attempt to lift more than 25 pounds.

Consistent with Rule 20 of the applicable schedule, Mr. Laszewski, when he worked, was assigned light duty as a carman. He continued to work his usual shift, 7:30 A.M. to 3:30 P.M., though always on light duty. On January 22, 1977 he was placed on such shift, working in the transportation yard. Also working in the yard on light duty status were the brothers, Richard and Tony Suchon. As time went on, it became apparent to Carrier that there was insufficient light work on the shift for the employment of three carmen. Since Laszewski was junior to Suchon and Suchon, Carrier decided to move Laszewski, and on June 6, 1977, he was advised to report to the repair track foreman for assignment on a daily basis.

On June 22, 1977, the 11:30 to 7:30 shift in the transportation yard was reduced by elimination of the position occupied by Carman N. Sankey. On August 15, 1977, Carman Laszewski was assigned to that shift, still on light duty status but undoubtedly performing some of the duties formerly handled by Mr. Sankey. On August 16, 1977, Claimant Jakusz made request as follows:

"Under the provisions of Rule #15, a new job has been created from 11:30 P.M. to 7:30 A.M., with rest days Saturdays and Sunday.

In view of my being a senior carman, I request this present assignment under Rule #27."

The denial of such request resulted in the filing of this formal grievance which is now properly before us for adjudication.

The rules cited by the parties are set out in pertinent part as follows:

RULE 15 BULLETINING POSITIONS

1. "When new jobs are created or permanent vacancies occur in respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All permanent vacancies or new jobs created will be bulletined. Bulletins must be posted seven (7) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge, and a copy of the application will be given to the local chairman."

RULE 20 FAITHFUL SERVICE

"Employees who have given long and faithful service in the employ of the Company and who have become unable to handle heavy work to advantage, will be given preference for such light work in their line as they are able to handle."

RULE 27 SENIORITY

1. "Mechanics, helpers, and apprentices of each craft will be shown on their respective point, craft seniority list separately."

For many years, Carrier has provided special work opportunities for disabled employees who are capable of handling light duty in their classification. Usually, the employee has been accommodated by assignment within his regular shift, though this is not the first occasion when an employee on light duty was moved to another shift. In this case the move attracted particular interest because Claimant desired both the shift and the days off which went with the job to which Carman Laszewski was assigned. The suspicion that Carrier was

"sharp-shooting" was encouraged by the fact that Sankey's position was abolished a short time before Laszewski was moved.

Nevertheless, it is apparent that no new job was created within the purview of Rule 15, Paragraph 1. Mr. Laszewski's disability continues, and he could not assume the duties of any new position--except a special new position with light duty as is certainly contemplated by Rule 20. Without in the slightest diminishing the integrity of Rule 15, we must recognize that Rule 20 is a salutary provision from the standpoint of both the Employees and the Carrier. Obviously, Rule 20 cannot be effectively applied in all cases without some circumscription of seniority rights. Under such circumstances it behooves the Carrier to handle job changes involving light duty so as to ensure that it is fully understood that any carving out of light duty for a disabled employee is strictly an expedient in the spirit of Rule 20 and not a new job under Rule 15.

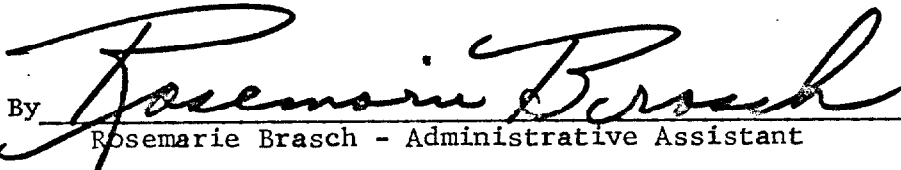
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of December, 1980.