

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago and North Western Transportation Company

Dispute: Claim of Employees: .

1. Mechanic-In-Charge Gregory A. Miller and Carmen Willie McGee were deprived of their contractual rights on November 30, 1982, when the Chicago and North Western Transportation Company violated the controlling agreement by permitting Carman J. Allender to displace a Mechanic-In-Charge Miller, who in turn displaced Carmen Willie McGee.
2. That the Chicago and North Western Transportation Company be ordered to reinstate Mechanic-In-Charge Gregory A. Miller to his former position as a Mechanic-In-Charge at Wood Street, and also be compensated the difference in pay between Carman and MIC wages dating from November 30, 1982; and that the Chicago and North Western Transportation Company be ordered to reinstate Carman Willie McGee to his former position at Wood Street, and compensate him for all wages lost dating from November 30, 1982.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This dispute deals with the disqualification of an employee who holds the position known as a mechanic-in-charge (hereinafter "MIC"). Claimant Miller was employed as an MIC at Carrier's Wood Street Yard in Chicago, prior to

November 30, 1982. Rule 17 of the applicable Agreement pertaining to MIC's states as follows:

"Mechanics in service will be considered for promotion to positions of supervisory foremen and mechanics-in-charge."

When vacancies occur in positions of gang foremen, mechanics from their respective crafts will have preference in promotion.

When promotion involves transfer, employees so promoted will retain seniority datum at point from which promoted and will not establish seniority as a mechanic at the point to which transferred.

Supervisory foremen and mechanic-in-charge assigned as such prior to June 1, 1939, and promoted from positions as mechanic, will retain seniority as mechanic at point as established June 1, 1939." (Emphasis supplied)

On November 30, 1982, Claimant Miller was removed from his position as MIC, and was permitted to displace Claimant McGee at the Wood Street Yard. Another of Carrier's employees filled the MIC position vacated by Claimant Miller.

The Carrier submits that it properly removed Claimant Miller as an MIC by exercise of Carrier's right to remove an employee from an appointed position. It asserts that Claimant Miller was unable to order material properly, handle men under his supervision without assistance and failed to follow orders issued to him. Carrier denies that Claimant Miller was displaced, rather, it contends he was simply disqualified, removed from his position and replaced by another employee.

The Organization in its argument and handling on the property has stated that Claimant Miller was entitled to a disciplinary investigation into his disqualification from the MIC position. Claimant Miller, the Organization emphasizes, was compelled by Carrier's improper actions to displace the less senior Claimant McGee.

The Board finds that disagreement between the parties as to the status of Claimant Miller's replacement as a Foreman or Carman, at either Council Bluffs or Proviso, is not pertinent to the resolution of this dispute. This Claim does not concern an employee who asserts a right to have been appointed to the MIC position vacated by Claimant Miller, in lieu of the employee who actually did receive the appointment. The narrow issue presented for our determination is the right of Carrier to remove Claimant Miller and permit the ensuing displacement of Claimant McGee. Rule 53 defining "mechanics work," and Rule 124, the Carmen's classification of Work Rule, are not applicable in this case. The Board further finds Rules 25 and 26 govern in instances of reductions in force or abolishment of positions, neither of which is present in the instant dispute.

The Organization's position that Claimant Miller was entitled to a disciplinary investigation upon his disqualification as a MIC is not supported

by the cited authority. Second Division Award No. 9362 involved the demotion of five Claimants from Carmen-Mechanics to Carmen-Helpers. In addition to not involving MIC's Award No. 9362 noted the fact that upon demotion those Claimants had to perform menial duties with the purpose of imposing discipline. There is no evidence that Claimant Miller was treated in similar fashion to the Claimants in Award No. 9362. In P.L.B. No. 2512, Award No. 83 cited by the Organization, the Board found that the selection of a Carman Helper, rather than a Carman to fill a MIC position was improper. While it did not address disqualification of a MIC per se, the Board reasoned "there can be no dispute that the position of MIC is an appointive one, without necessity of following strict seniority". (Award No. 83 at p.4).

The Board finds that the Awards submitted by Carrier which support the principle that certain demotions due to disqualification are not to be equated with discipline, provide minimal guidance for resolution of this dispute. The Board further finds, however, that the parties in an exchange of letters dated September 6, 1944 and September 8, 1944, gave some evidence that disqualification from a MIC position without disciplinary connotations was intended by the parties to be inherent in such a promotion.

The September 6, 1944 letter concurred in by the Carrier by its September 8, 1944, response, both of which were submitted by the Organization during the handling on the property, states in pertinent part:

A mechanic promoted to a Supervisory Foreman or Mechanic-in-Charge and subsequently disqualified, would return to the class from which promoted [sic] under provisions of the 4th paragraph of Rule 16, reading

"An employe exercising his seniority for a vacancy under this rule will lose his right to the job he left, and if, after a fair trial, he fails to qualify for the new position, he will have to take whatever position may be open in his line."

and if as a result of abolishing position the Foreman or Mechanic-in-Charge could no longer hold a position on basis of seniority as such, then his return to the mechanic class will be in line with Rule 25, Federated Crafts' Agreement. (Emphasis supplied).

The September, 1944 Understanding manifested by this exchange of correspondence between the parties, serves to buttress the Carrier's contention that disqualification from the MIC position is not disciplinary in nature and is to be viewed in a fashion similar to disqualification from a bid position. See, Second Div. Award No. 7714. The Organization does not contend that the 10 month period Claimant held the position of MIC was not a "fair trial."

The above-quoted language also affirms this Board's finding that Claimant Miller had no right to exercise his seniority pursuant to Rule 25 to displace Claimant McGee. The Carrier has correctly summarized Claimant McGee's right to compensation in its submission:

"When Claimant Miller was relieved of his position, however, he should not have been permitted to displace Claimant McGee. Miller would have had displacement rights had he been affected by a force reduction, but he was not. Consequently, it should have been Miller, rather than McGee, who was placed on furlough status. As Claimant McGee was improperly displaced, he should be compensated for time lost until a position became available to which he could have exercised his seniority."

(Carrier's Submission, p.4) (Emphasis supplied).

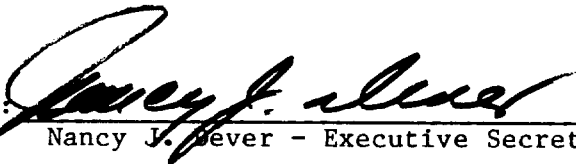
The Claim is denied as to Claimant G. A. Miller. Claimant W. McGee shall be compensated for lost wages, less earnings received from other employment, for the period from November 30, 1982, until the earliest of the following to occur: (1) his reemployment as a Carman by the Carrier, or (2) notification by Carrier of a Carman's position to which Claimant McGee could have transferred upon proper exercise of his seniority, or (3) the abolishment by Carrier of Claimant McGee's original position which was improperly occupied by Claimant A. Miller.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 4th day of June 1986.