

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 12 and 24 and the Memorandum of Understanding dated March 28, 1947, when they denied Carman A. G. Mernick the right to bump on job at Chester, Illinois, when he returned to service following sick leave.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Mernick for all lost wages beginning April 17, 1984 and continuing until violation is corrected including all other benefits due him including Travelers Insurance and Dental Insurance Aetna and Provident Insurance.

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 employes 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, a Carman at the Carrier's Dupo, Illinois facility, was injured on January 28, 1983. The injury required surgery, and the Claimant attempted to return to work on April 17, 1984, but was furloughed. During the time the Claimant was on sick leave, if he had been working, he would have been furloughed during February of 1983 and recalled on June 6, 1983. On July 11, 1983, a vacancy occurred at the Carrier's Chester, Illinois facility. In accordance with the Rules, only active employees may bid. No bids were received on this opening, and the Carrier allowed a furloughed Carman, who is junior to the Claimant, to transfer to the job. During September 1983 the Claimant would have been furloughed if he had been working. Upon the Claimant's return to work on April 17, 1984, he requested to bump into the job at Chester in accordance with Rules 12 and 24 and the Memo of Understanding.

Rule 12 reads in pertinent part:

"Rule 12. Filling new positions or vacancies.

(a) New jobs created and vacancies will be bulletined and the oldest employee in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling."

Rule 24 reads in pertinent part:

"Rule 24. Seniority.

(a) Seniority of employees in each craft covered by this agreement shall be confined to the point and seniority subdivision employed."

The Memorandum of Understanding between the Organization and the Carrier reads:

"It is understood and agreed that an employee absent from work by reason of disability will, upon his return to service, be permitted to return to the position held by him prior to such absence, provided such position has not been abolished or a senior employee has not exercised displacement rights thereon, or he may, upon return, or within five days thereafter, exercise seniority rights to any position bulletined during such absence."

The Organization argues that the Carrier has violated Rules 12, 24, and the Memorandum of Understanding. The record is clear. The position in question was bulletined during the time the Claimant was on sick leave. Upon his return, the Claimant, under the Rules in the Memo, has the right to bump the junior person on that job. Had the Claimant not been ill, he would have been actively employed during the time of the bulletin, and would have had an opportunity to bid on the job. Since by the Carrier's own admission, only active employees may bid on a job, the Claimant could not have exercised his seniority rights until his return on April 17, 1984.

The Carrier argues that the Claimant was, in effect, on furlough status when he returned to work on April 17, 1984. Therefore, he has no right under Rule 24. The Carrier states that Rule 117 covers facilities such as Chester, Illinois, which are "one-man points." Therefore, the Memorandum of Understanding does not apply. Rule 117 states that when employees bid into a one-man point, they will retain their seniority at their home point, but they may not return to their home point unless their regular assignment is not available. Likewise, they are safe from being bumped from outside their position. The Carrier notes that if the Organization's position were to be sustained, they will be in an unusual position of having furloughed Carmen senior to the Claimant in this case, and yet the Claimant would be employed. The Carrier states that the Rule of reason should apply and the Carrier's position should be sustained.


Upon complete review of the evidence, the Board finds that all senior individuals had an opportunity to bid on the Chester, Illinois position during July, 1983, and for whatever reason, they declined to exercise their seniority since no bids were received. Only the Claimant was precluded from exercising his seniority because of his disability status. The Memorandum of Understanding is very clear and unambiguous. It states that those who were on sick leave may, upon their return, exercise their seniority rights to positions bulletined during their absence. There was a position bulletined (Chester) during the Claimant's disability leave. The provisions of Rule 117 are in the nature of general language which protect and restrict the rights of employees at outlying points. The Memo of Understanding is an exception to this and other provisions of the Controlling Agreement. Since the Claimant cannot hold two statuses (furloughed and disabled) at one time, it is the Memo which contains the controlling language and the Claim will be sustained with the exception of that part of the Claim for Insurances.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1986.