

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Southern Pacific Transportation Company
(Eastern Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 26, when Carman Apprentice L. D. Gallardo was by-passed and another Apprentice, F. M. Giglio, was assigned to work Eagle Pass, Texas.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate L. D. Gallardo as follows:

- a) Beginning June 1, 1981, until the matter is corrected that Carman Apprentice L. D. Gallardo be compensated in the amount of eight hours (8') per day, five (5) days per week and a like amount of any overtime made by Mr. Giglio while assigned at Eagle Pass, Texas.
- b) Also, inasmuch as this matter was not corrected before June 15, 1981, by allowing Mr. L. D. Gallardo to displace Mr. Giglio, that upon final adjudication Mr. Gallardo be given seniority date in advance of Mr. Giglio at San Antonio, Texas.

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.

Claimant holds seniority as Carman Apprentice at Carrier's San Antonio, Texas Shops. His apprenticeship seniority dates from either April 3, 1977, or May 2, 1977. This factual uncertainty is most unfortunate since it is an element of critical significance in the ultimate resolution of this dispute.

According to the record, Claimant was furloughed from the San Antonio Car Department on May 7, 1980, just nine (9) days short of completing his apprenticeship. A few months later, on August 20, 1980, Claimant returned to the San Antonio Diesel Shop as a Laborer, and he continued to work in that position, rather than availing himself of the first opportunity to work as a Carman at Eagle Pass, Texas, which was a position which had become available sometime in November of 1980 and which, apparently, had been offered to him.

On May 16, 1981, the San Antonio Carman Local Chairman was advised of the availability of two (2) Journeymen Carmens' positions: one position at San Antonio; and the other at Eagle Pass. As was the practice, the Local Chairman recommended the most senior Carman Apprentices to fill these vacancies. According to the Local Chairman, he referred G. Gardner (whose Apprentice seniority date was July 10, 1974) and Claimant for this purpose. Carrier alleges that the Local Chairman also referred F. M. Giglio, whose Apprentice seniority date was either April 3, 1977 (Carrier's view) or May 2, 1977 (Organization's view). On May 15, 1981, when the vacancies were announced, Apprentice Giglio needed eleven (11) days in order to complete his apprenticeship training; whereas Claimant, as noted previously, needed only nine (9) days in which to complete his apprenticeship training when he was furloughed on May 7, 1980.

Carrier chose among the three (3) employees by placing G. Gardner at San Antonio, while filling the Eagle Pass position with Mr. Giglio.

According to Organization, both Claimant and Mr. Giglio accepted the Eagle Pass Carman's position. As a result of Mr. Giglio's assignment, he completed his apprenticeship and established Carman seniority as of July 19, 1981. Claimant, however, who was not assigned, never established his Carman's seniority.

Organization contends that Carrier violated the clear and unambiguous language of Rule 26 of the parties' Controlling Agreement by awarding the Eagle Pass Carman's position to the junior Apprentice, Mr. Giglio, rather than to Claimant who was more senior. In support of its position, Organization cites Rule 26 which reads as follows:

"Transfer of Laid Off Employees

When reducing forces, if men are needed at any other point, they will be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company. Seniority to govern all cases.

* * * * *

Organization further argues that Rule 26 is not only applicable to Journeymen, but also to Apprentices who transfer such as Claimant (Second Division Award No. 6846).

Carrier challenges Organization's claim based upon a narrow reading of Rule 26. In this regard, Carrier essentially contends that Rule 26 cannot be interpreted as requiring Management to repeatedly offer laid off employees numerous opportunities to refuse similar positions at the same location when offered. Carrier maintains, therefore, that when Claimant previously refused Carrier's offer of a Journeyman's position at Eagle Pass in November of 1980, Carrier was free to offer the next available opportunity to a more junior Carman.

Regarding this latter point, Organization counters that Claimant's prior refusal is of no consequence in the instant case since such a refusal would not cause an abandonment of Claimant's seniority rights. Additionally, Organization further argues that all three (3) employees involved in this case (Claimant, Gardner and Giglio) had been offered similar positions previously and had also refused them. Therefore, Organization contends, Claimant should not have been prejudiced by his previous refusal since neither of the other two (2) employees who were offered positions and refused them was similarly denied the right to bid on future vacancies.

The Board has carefully read, studied and considered the entire record in this case and finds that a significant conflict exists concerning Claimant's seniority date(s). If we are to believe Organization's Submission, Claimant acquired an Apprentice seniority date of May 2, 1977. If we are to believe Exhibit A of Organization's same Submission, however, Claimant acquired apprenticeship seniority on April 3, 1977. This difference in Claimant's seniority dates goes to the very heart of this controversy. If Claimant's seniority date, as stated in Organization's Submission is correct, then Carrier employed the most senior Carman Apprentice (Giglio) at Eagle Pass and the instant Claim, therefore, is moot. If Organization's Exhibit A to its Submission correctly states Claimant's seniority date, however, then Carrier may, in fact, have violated the applicable terms of Rule 26.


Since it is the longstanding policy of this Division not to choose among factual conflicts which have not been resolved on the property by the parties, and since Organization is the moving party in such matters and shoulders the burden of proving its case with a sufficient quantum of probative evidence, then this Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.