

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad
(Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the controlling Agreement, Rule 27(d) and 31(a), when they failed to recall Carmen A. J. Fenner, R. D. Peaselee, F. Skidan and D. Wierzba back to work in seniority order, and instead recalled four junior carmen.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate each of the named claimants in the amount of eight (8) hours pay for each day beginning with the date of September 13, 1984 until such time as the Carrier ceases to violate the 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 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.

On September 13, 1984, the Carrier recalled to service Carmen Susa, Ciofani, Christensen and Potrykus, all of whom are junior in seniority to the named Claimants. The instant Claim alleges that, in so doing, Carrier violated Rules 27(d) and 31(a) of the controlling Agreement, which state as follows:

"RULE 27 - Reduction In Force

(d) In the restoration of forces, employees will be restored to service in accordance with their

seniority and shall be returned to their former position if possible. Employees failing to return to service within fifteen (15) days after date of notice to their last known address, unless an extension has been granted by the supervisor in charge and the local committee, will forfeit all seniority rights. The local committee will be furnished with a list of employees to be restored to service.

* * * *

RULE 31 - Seniority

(a) Seniority of employees in each craft and subdivision thereof covered by this agreement shall be confined to the point employed and begins at the time of employee's pay starts at the point and in the craft or subdivision thereof in which employed. The seniority list will be open to inspection and copy will be furnished the local committee and General Chairman."

The Organization maintains that while the Carrier has the unquestioned right to direct its work forces so as to operate efficiently, and to have qualified employees perform work needed to be done, it must do so within the confines of the Agreement. The Organization points out that on a visit to the shop on September 24, 1984, it was observed by the General Chairman over a period of approximately 2 1/2 hours, that not one of the nineteen employees in the shop performed welding work. Moreover, despite the fact that Carrier claims it needs welders to run an efficient operation, there were never more than four employees welding during a period of four hours when the parties made a "joint check" of the premises. To the Organization, these observations support its Claim, and demonstrates that Carrier has shown complete disregard for the seniority rights of the Claimants, who have worked for Carrier for as many as 35 years.

Carrier raised several arguments before this Board which were not discussed during the handling of this Claim on the property, and therefore will not be considered here. However, its basis contention, we believe, is meritorious and requires that this Claim be denied. That is, Carrier has the prerogative and right to assign work to qualified personnel, subject to its contractual obligations. See Second Division Award No. 2916. In the instant dispute, Carrier exercised its managerial discretion that there was a need to add four Carman welder positions at Milwaukee Shops in order to complete special work projects. From the record before us, it appears that Carrier made an effort to train and educate Carmen as welders in order to prepare the workforce for the changing job requirements as the predominant nature of the work shifted. Claimants did not avail themselves of the opportunity.

We do not view the Organization's observations of the shop as determinative of this matter. Given the limited amount of time spent in observing the work performed, this Board can hardly conclude that there is no welding

work or that welding work has not been performed in the past and may be performed again in the future. We find that Carrier's actions were not in violation of Rules 27(d) nor 31(a). Carrier was required to recall in seniority order only those employees who possessed the necessary fitness and ability to perform the job. Since Claimants undisputedly did not possess the requisite welding skills, Carrier properly recalled the service junior employees in seniority order who did possess these skills. Accordingly, we will rule to deny the Claim.

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 30th day of September 1987.