

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Birmingham Southern Railroad Company

Dispute: Claim of Employees:

1. That the Birmingham Southern Railroad Company, hereinafter referred to as the Carrier, violated the controlling Agreement when it upgraded Carman Raymond R. Misso ahead of other Carmen Trainees at Birmingham, Alabama on June 21, 1984.

2. And accordingly, the Carrier should be ordered to compensate Carman Trainees Robert D. Love and Willie Lee Jones, hereinafter referred to as the Claimants, the difference between Carman Trainees rate and Carmans rate of pay commencing on June 21, 1984 and continuing as long as violation continues, as the result of said violation.

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.

On June 21, 1984, Carrier hired Raymond Misso as an upgraded Carman at its Birmingham, Alabama facility, without first requiring him to go through its Carman Trainee program. At the time Misso was hired, Claimants both were working as Carman Trainees at Birmingham. The Organization thereafter filed a Claim on Claimants' behalf, challenging Misso's hiring as an upgraded Carman and Carrier's failure to upgrade Claimants ahead of Misso.

The Organization contends that Carrier's action violated Appendix A, Section 2 of the controlling Agreement by arbitrarily upgrading Misso ahead of Claimants. Appendix A, Section 2 provides:

"UPGRADING:

(A) As the Carrier determines it necessary, and for the purpose of giving Carman Trainees experience as Carman, the Carrier may upgrade, in order of their entry into the Carman Trainee Program, Carman Trainees to perform Carman's work. Such Upgraded Carman may work independently on Carman's work (including cutting and welding) and while in such upgraded status will be paid the rate of pay for work performed, as provided in the current Carman's Agreement.

(B) A Carman Trainee upgraded to Carman will not establish seniority as a Carman until he is qualified and promoted as outlined under Requirements for promotion to Carman.

(C) Carman Trainees working as Upgraded Carmen will be required to complete prescribed off-the-job courses as if they were in Carman Trainee status. Failure of such an upgraded employee to complete his off-job training satisfactorily and on a timely basis shall be reason for this reversion to Carman Trainee status, regardless of seniority, until either the training is brought up to a satisfactory and timely basis or until he is terminated as an employee."

The Organization contends that this Section governs how an employee will be upgraded. The Organization argues that the Agreement does not allow Carrier to hire an employee and upgrade that employee to Carman (mechanic) status without first placing the employee in the training program for completion of the required on and off-job training; the only exceptions to this Rule are those included in sub-paragraph (C).

The Organization points out that Carrier admittedly hired Misso as an upgraded Carman, and Misso never entered the training program. The Organization argues that under sub-paragraph (C), Carrier is obligated to require any new employee, who is not a bona fide Carman, to enter the training program; the employee then would be upgraded in accordance with date of entry into the training program. The Organization further argues that Article 57, Section 3 of the Agreement, which provides:

"The term 'upgraded mechanics' as used in this Article is intended to apply to employees hired in an upgraded status without first establishing seniority as helper or apprentice, as well as those upgraded after entering service as a helper or apprentice."

does not apply to this dispute because Article 57 deals with entry rates of pay. The Organization asserts that Article 57 has nothing to do with the actual upgrading of employees in the training program.

The Organization asserts that this dispute arose because Carrier hired and upgraded ahead of employees already in the training program with entry dates prior to Misso's entry date, and because Carrier did not require Misso to enter the training program. The Organization argues that Carrier has failed to prove that it had the right to take such action. The Organization denies that it agreed to Carrier's action; Carrier failed to produce any evidence that such an agreement ever was reached. Moreover, even if such an agreement had been made, the agreement would not have been in accordance with the clear and unambiguous terms of Appendix A. The Organization contends that based on the record and the cited rules, Carrier violated the controlling Agreement by arbitrarily upgrading Misso ahead of the Claimants; the Claim therefore should be sustained.

Carrier argues that although it is a departure from past practice on the property, Carrier had the contractual right to hire Misso as an upgraded Mechanic under the provisions of Article 57. Carrier asserts that it met with the Organization's then-General Chairman to discuss this action; the General Chairman agreed with Carrier's interpretation of Article 57. Carrier contends that the current General Chairman's attempt to overturn this agreement through the grievance procedure is unfounded. Carrier argues that the Organization may attempt such a change only through seeking a separate agreement or through the procedures set forth in the Railway Labor Act. Moreover, this Board has upheld the parties' joint interpretation of an agreement. Carrier argues that in this matter, the contract terms are clear and concise, and the parties' joint interpretation was reached by the agreement of individuals who had authority to make such an agreement. Carrier therefore contends that this Board is without power to reinterpret the controlling Agreement. Moreover, the clear language of Article 57 supports Carrier's employment of upgraded mechanics.

Carrier next argues that it did not violate Appendix A, Section 2 of the controlling Agreement. Carrier contends that this provision does not apply because Misso never entered Carrier's trainee program. Carrier therefore contends that the Claim is without merit and should be denied.

This Board has reviewed the evidence in this case, and we find that Article 57, Section 3, of the Agreement allows the Carrier to hire "upgraded mechanics," who are "employees hired in an upgraded status without first establishing seniority as helper or apprentice"

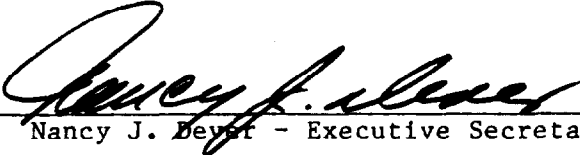
It is obvious, from the evidence, that the Carrier usually hires in its Carmen as apprentices and allows them to be upgraded through the job-training process. However, nothing precludes the Carrier from hiring in upgraded mechanics; and, as a matter of fact, the Agreement provides for it. Hence, the 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 6th day of January 1988.