

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company violated Rules 21(a) of the June 1, 1960 controlling agreement when they denied Electrician J. E. Boyd his contractual rights under the Agreement to displace on the position he desired, and his 34 years seniority entitled him to, when the position he held was abolished by the Carrier.

2. That, accordingly, Carrier be ordered to (a) allow the claim of eight (8) hours at time and one-half, five (5) days a week, commencing February 7, 1985 and continuous to Electrician J. E. Boyd, Claimant, until; (b) Mr. Boyd be allowed to place on the position held by Mr. Diekmann; (c) that Carrier cease the practice of violation as given herein in denying seniority rights for the purpose of displacement; and (d) in addition to the money amount claimed herein the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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 January 26, 1985, the Carrier issued Bulletin No. 009-E at St. Louis, Missouri by which it abolished thirteen positions, including Job 207 which was held by the Claimant. On February 7, 1985, the Claimant attempted to displace fellow Electrician R. E. Diekmann. The latter held business car position with hours of 7:30 AM-3:30 PM, Saturday and Sunday, rest days. This request was denied and the Claimant displaced to a diesel shop position with the same hours, Friday and Saturday as rest days. The Organization filed a Claim on March 11, 1985, alleging violation of Rule 21(a) by the Carrier.

According to this Claim the Carrier did not permit the Claimant displacement rights to "which his seniority entitled him." At the time of the incident, the Claimant had some 32 years' seniority; Electrician Diekman, whom he attempted to displace, had some 14 years' seniority. The Claim was denied by the Carrier on grounds that "local supervision felt that (the Claimant) had not acquired sufficient ability...in spite of occasional work on business cars to qualify for the job of maintaining, repairing, and troubleshooting..." them.

The Rule at bar reads, in pertinent part, as follows:

Rule 21(a)

"When the force is reduced seniority as per Rule 25 will govern; the men affected to take the rate of the job to which they are assigned. Employees displaced through the abolition of jobs or force reductions and other employees so effected thereby will be allowed to place themselves on such jobs as their seniority entitles them to, but only such employees who are actually disturbed by rearrangement of jobs or abolition of jobs will be permitted to exercise their seniority in this manner....."

The Board observes, first of all, that in its correspondence with the Organization on property the Carrier states that as of the early part of 1986 the Claim "that Mr. Boyd should be allowed to bump on the business car position is moot inasmuch as there is no longer a position available." The position held by Mr. Diekman was abolished shortly before the Carrier wrote this to the General Chairman on February 7, 1986. In subsequent correspondence the General Chairman states that the abolishment of the position does not nullify rights which the Claimant may have had under Rule 21(a), when he attempted to exercise them, and the Claim must still be addressed. The Board concurs. It will address the merits of the Claim filed on March 11, 1985.

The decision by the Car Foreman to disallow the Claimant's request for a displacement to the business car position is based on his view that the Claimant had insufficient fitness and ability to hold the position. The Claimant states, however, that he had actually held this position in the past, and that he also had worked it periodically on rest days, vacation days and so on. One of the Claimant's fellow Electricians states in the record that "...the Carrier utilizes (the Claimant) to work the (disputed) position in the absence of Mr. Diekmann." This is further corroborated by a retired General Foreman of the Locomotive shop who states that it is "common knowledge" that the Claimant (as well as other electricians from the locomotive shop) have worked the business cars over the years. In addition to stressing the Claimant's seniority rights under Rule 21(a) the Organization argues that the Claimant had fitness and ability to hold the position on which he attempted to displace.

The Board has consistently recognized that Carriers retain what Fourth Division Award 756 calls "reasonable...bounds of discretion...(to) ...determine qualifications for a particular position" when employees bid on positions, and that it is hesitant to substitute its judgment about "adequate skills" (See Second Division Award 8550; Fourth Division Award 756; also Second Division Awards 7263, 7415, 8166). At the same time, however, the Board has also held that such discretionary decisions by management, in conjunction with contractual seniority provisions, cannot be done in an arbitrary or capricious manner. In Claims such as this the burden of proof lies with the Organization as moving party (Third Division Awards 15670, 25575; Fourth Division Awards 3379, 3482; PLB 3696, Award 1).

In the instant case the Organization relies on Claimant's experience in periodically filling the position in question, as well as his long tenure as a member of the craft, as support for his right to have exercised his seniority rights under Rule 21(a). There are conflicts of evidence in the record with respect to the first point. The corroborated information presented by the Organization is more persuasive and the evidentiary burdens with respect to this point are met.

Secondly, the Organization states that Claimant actually held the position at one time in the past. The record is less clear on this point. The Carrier argues that such statement by the Claimant is self-serving. The Board must observe however, that the Carrier, by means of affirmative defense could have proved the Claimant wrong on this point. It could have resorted to its own records. It did not do so. In view of the record taken as a whole the Board must conclude that the Rule at bar was violated when the Claimant was not permitted to exercise his seniority rights as he attempted to do so. On merits, the Claim must be sustained.

Because of various peculiarities related to the record on this case, including the fact that the disputed position was abolished during the appeals of the Claim on property, the Board rules on request for relief as outlined in the Statement of Claim in the following manner:

- (a) The Claimant shall be paid any differentials in pay between the position he bid on in February, 1985 and the position he held after that time until the position held by Mr. Diekmann was abolished.
- (b) The Claimant should have been permitted to displace to Mr. Diekmann's position had it not been abolished.
- (c) Granted by the Board.
- (d) Denied by the Board if any compensation is due the Claimant.

Any arguments or information found in the submissions which were not included in the exchange when this Claim was handled on property are inappropriately before the Board and have been treated as such (See Third Division Awards 20841, 21463, 22054).

Form 1  
Page 4

Award No. 11633  
Docket No. 11307  
89-2-86-2-119

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 18th day of January 1989.