

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11839
Docket No. 11713-I
90-2-89-2-8

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Robert L. White
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

Did the Burlington Northern Railroad Co. violate Rules 62, 12 (b), 25 (e), and Rules 50 (f) and 51 all of which are part of the current controlling agreement between the International Brotherhood of Electrical Workers and the Burlington Northern Railroad Co. dated April 1, 1983, when it allowed Mr. W. Lange, Electrical Foreman at Livingston, Montana to bump Electrician R. L. White at Spokane, Washington?

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.

The sole central question posed in this dispute is whether Rules 62, 12B, 25E, 50(f) and 51 of the current controlling Agreement were violated when an Electrical Foreman at Livingston, Montana bumped Claimant at Spokane, Washington on April 1, 1988. It was Claimant's contention that since the Electrical Foreman's position was an appointed position, the incumbent thereof was exempt from Rule 12 by virtue of Rule 62 and accordingly, should have exercised his seniority consistent with Rule 25. In other words, Claimant maintains that he was improperly bumped from his Electrician's position when said personnel action was implemented.

Contrawise, Carrier argues that Electrical Foremen are not exempt positions and, as such, are covered with certain specified exceptions under the controlling Agreement. Specifically, as per Rule 62, Electrical Foremen

are not subject to Rules 12, 22, 27, 30, and 31, but more pointedly in accordance with Rule 12, incumbents of said position could not be displaced. On the other hand, Carrier points out that since Rule 12 does not preclude the abolishment of the Electrical Foreman's position, the incumbent of the abolished position was not contractually estopped from exercising displacement rights.

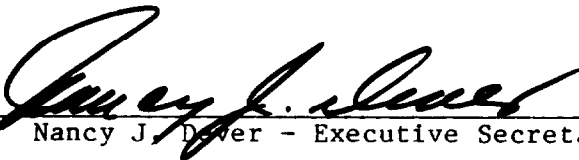
In considering this case, the Board concurs with Carrier's position. Simply put, Rule 12 is inapplicable herein, since the incumbent of the Electrical Foreman's position was not displaced. Rather the position was abolished, which is a distinguishable action and the incumbent thereof was not prevented from exercising displacement rights under the applicable controlling Agreement. Since Rule 62 clearly provides that incumbents of Electrical Foremen positions are subject to the scheduled Agreement with the exception of Rules 12, 22, 27, 30 and 31 and since said Rules are inapplicable under the facts of this dispute, the Board, of judicial necessity, must find for Carrier. Consequently, the instant Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1990.