

The Second Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provisions of Rules 27, 38, 60 1/2 and 153 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman David F. Stanley (hereinafter "claimant") when the carrier did not give proper notice to the claimant and did not list junior employees on the furlough notice effective May 31, 1985.

2. That, accordingly, the claimant is entitled to be compensated for eight (8) hours each day, beginning June 3, 1985, and each day of work thereafter until violation is corrected at the applicable Carmen's rate. Further, that the claimant be compensated for all losses sustained while held out of service, including, but not limited to, vacation, personal days, loss of coverage under the Health and Welfare and Life Insurance Agreements and all other benefits accruing to other employees as a condition of employment.

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 May 24, 1985, Carrier posted a notice advising that twenty-one Carman positions, including Claimant's, would be abolished at the Raceland Car Shops effective May 31, 1985. Claimant attempted to displace a junior employee from an air brake valve repair position. Because the Carrier deemed Claimant unqualified for this position, his displacement was denied. There being no other junior employees whom Claimant could displace, he was furloughed.

Carrier asserts Rule 60-1/2 limits the right to displace to employees who are qualified for the position. It insists Claimant was not qualified for brake valve work because he had no experience on this job. The Organization argues the Carrier had a past practice of allowing employees to displace regardless of qualification. Nevertheless, the Organization submits Claimant was qualified because he was a journeyman Carman and had worked in the valve room for three days (without pay) following his furlough.

The applicable portion of Rule 60-1/2 reads as follows:

"(a) The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping,' will not be permitted, except that when forces are adjusted or reduced, the men on positions abolished shall have the privilege of displacing any man of his craft junior to him on any shift, provided the man exercising his seniority is qualified, by making written application to official in charge, with copy being given to local chairman, within 24 hours from notice of such abolition of position. Employees thus displaced will have the privilege of exercising seniority in the same manner." (Emphasis added)

The above provision is clear and unambiguous in stating an employee must be qualified for the position to which he is exercising a displacement. Thus, any past practice of allowing unqualified employees to displace cannot be used as a basis for interpreting the Rule. By adding the condition, "provided the man exercising his seniority is qualified," the parties have distinguished Rule 60-1/2 from Rule 18, which governs the filling of vacancies or new jobs, and allows the employee a fair trial to qualify. Rule 60-1/2 does not provide a qualification period. Under the Rule, Claimant would have no right to displace to the position if he was not qualified as of the date of his attempt to exercise his seniority. The issue, therefore, is whether or not he possessed the requisite qualifications. The burden of proving Claimant was qualified rests with the Organization. (See Second Division Awards 7415 and 7935).

This Board has consistently held it is the right of the Carrier to determine an employee's fitness and qualifications. Further, it has maintained that the Carrier's decision is final and conclusive unless it is evident such action was totally unreasonable. (See Second Division Award 7415 and Awards cited therein). Based upon the evidence of record, we cannot conclude the Organization has met its burden of proof. The fact that Claimant is a journeyman and worked in the valve room for three days is not sufficient evidence of his qualifications, absent assumptions this Board is not prepared to make. Further, the fact that Carrier might be obligated to pay protective benefits to the employee Claimant sought to displace is not sufficient to draw the conclusion Claimant's displacement was denied for economic reasons rather than for a lack of qualifications.

As we find no violation of the Agreement, the claim must be denied.

Form 1
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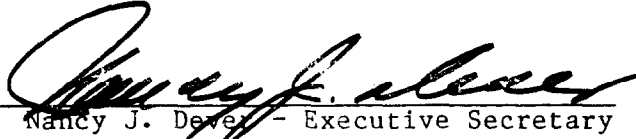
Award No. 12182
Docket No. 12056
91-2-90-2-214

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 November 1991.