

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 Rule 27 1/2 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 Stanley Reed (hereinafter "claimant") when on December 18 and 19, 1986 the carrier called Carman Randy Meeks in violation of Rule 27 1/2 of the Controlling Agreement.

2. That, accordingly, the claimant is entitled to be compensated for sixteen (16) hours at the applicable straight time rate for the carrier's violation of the aforementioned Rule.

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 dates of claim, while Claimant was in furlough status, Carrier used an employee junior in seniority to Claimant to fill a two day vacancy as an ABD valve repairman in the Air Brake Shop at Carrier's Raceland Shop. Claimant had requested he be used for relief work under Rule 27-1/2, which reads, in pertinent part, as follows:

"(a) The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph (b) hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee.

(b) Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work.

\* \* \*

(c) Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the extra list in seniority order and used in accordance with the rules of the agreement."

The Carrier submits the applicable Rules allow it to make assignments under Rule 27-1/2 based upon the qualifications of the employees, rather than on a strict seniority basis without regard to qualifications. It notes Rule 27-1/2 requires employees be used "in accordance with the rules of the agreement," and argues those Rules dealing with relief service and temporary vacancies all provide for the use of qualified employees. Carrier further asserts Claimant was not on the list of employees who were qualified to repair ABD valves.

The Organization argues Rule 27-1/2 is clear and unambiguous, making no reference to qualifications. It asserts Carrier had a duty to allow Claimant a fair opportunity to demonstrate his abilities to perform the work in question. Further, the Organization denies the Carrier's allegation Claimant lacked the requisite qualifications for the job in question.

At the outset, we must determine whether or not Rule 27-1/2 contemplates the use of employees strictly on a seniority basis without regard to qualifications. It is our determination it does not. First, we note the Rule requires reference to other Rules of the Agreement; it does not stand alone.

All other Rules in the Agreement which deal with the filling of short-term vacancies allow the Carrier to consider qualifications. The only Rule to which we have been referred which does not require the employee to have previously demonstrated he is qualified is Rule 18, which governs the filling of bulletined vacancies. Even that Rule requires the employee bidding a vacancy to be familiar with the work in a general way. It provides for a trial period, which ordinarily should not consume more than three days, for the employee to "get the run of the work." The Rule further distinguishes this trial period from a period of learning the job.

In addition to the above, we note Rule 27-1/2 states positions filled thereunder are done so on a day-to-day basis. In light of the nature of these vacancies, it would be an unreasonable interpretation of the Rule to require the Carrier to call an employee without knowing whether or not he could do the work. There is obviously no opportunity for training under such circumstances.


Turning our attention to the issue of whether Claimant was qualified, we rely upon the principle that it is the Organization's burden to prove the Carrier erred or was arbitrary in its determination. There is nothing in the record before this Board which goes toward meeting this burden of proof. Accordingly, we must conclude the Agreement was not violated.

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.