

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12869
Docket No. 12597
95-2-92-2-117

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railway Company, CSX Transportation Company, (hereinafter referred to as 'Carrier'), violated the controlling Shop Crafts Agreement, specifically Rule 27, when the Carrier improperly recalled a junior employee (D. J. Brown ID # 255172) from furlough prior to recalling senior employee, J. W Burroughs, ID # 100230, on January 7 and 8, 1991.
2. Accordingly, the Carrier be ordered to additionally compensate Carman J. W. Burroughs for all regular wages in the amount of two (2) days, eight (8) hours each, to be paid at the applicable Carmen's rate and other applicable benefits for 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Following a seasonal force reduction at Carrier's Raceland Car Shop, furloughed Carmen were recalled for duty in early January 1991. Carrier recalled a Carman junior to Claimant to work in its Air Brake Valve Room two days before Claimant was recalled. The Organization is seeking two days pay for Claimant on the basis he should have been recalled first. The Carrier contends that Claimant was not recalled before the junior employee because he was not qualified to perform the duties required of the position being filled in the Air Brake Valve Room. Further, Carrier states the Rules relied on by the Organization in support of its claim do not require that employees being recalled from furlough be given an opportunity to work the job on a trial basis.

In Second Division Awards 12182 and 12191, this Board had the opportunity to review two other situations involving this Organization and this Carrier arising at the same facility, the Raceland Car Shop, wherein, (1) a senior Carman was not allowed to displace a junior employee from a position in the Air Brake Valve Room, and (2) a furloughed junior employee was recalled ahead of a senior furloughed employee to work a two day vacancy in the Air Brake Valve Room. In Award 12182, the Organization contended that Claimant was qualified to work in the Air Brake Valve Room because he was a Journeyman Carman. In Award 12191, the Organization argued that the recall Rule was clear and unambiguous and makes no reference to qualifications. After an extensive discussion of the same Rules cited in this claim, the Board in Award 12182, concluded that "an employee must be qualified for the position to which he is exercising a displacement." In Award 12191 the Board noted:

"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 that 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."

Further, Award 12191 noted that it was the Organization's burden to prove that Claimant was qualified and that the Carrier erred or was arbitrary in its determination. That notion is again embraced in this Award, and it is noted that several months after this claim was filed, Claimant was afforded an opportunity to demonstrate that he was capable of working in the Air Brake Shop. However, he never took advantage of this opportunity, going off duty because of sickness and eventually taking disability.

The claim is without merit.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.