

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13270

Docket No. 13121

98-2-96-2-20

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(International Association of Machinists and
(Aerospace Workers AFL-CIO

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Dispute - Claim of Employees:

The Soo Line Railroad Company (hereinafter referred to as the Carrier) violated the controlling Agreement, specifically Memorandum of Agreement effective March 1, 1989, when it improperly refused to assign upgraded Machinists R. A. Wimmer, V. B. Heiman and C. Knapp, Cudahy, Wisconsin (hereinafter referred to as the Claimants) to Traveling Mechanic positions.

Accordingly the Soo Line Railroad Company assign the claimants proper Traveling Mechanic seniority dates and pay the claimants for all wages lost due to being arbitrarily and capriciously bypassed for Traveling Mechanic positions."

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 were given due notice of hearing thereon.

This dispute focuses primarily on how a Traveling Mechanic's position must be filled and whether the persons selected must come from the ranks of employees represented by the International Association of Machinists (the "Organization").

Controlling in this dispute is a "Memorandum of Agreement ("MOA") between the International Association of Machinists and Aerospace Workers and the Soo Line Railroad Company," signed on February 12, 1989. This MOA became effective March 1, 1989.

The MOA established the classification of Traveling Mechanic "for the purpose of performing necessary mechanical work on road equipment, on line of road, throughout the entire Soo Line system." The Carrier's application of this MOA resulted in the claim now before the Board.

Simply stated, the Carrier, on March 29 and 31, 1994 bulletined 15 seasonal Traveling Mechanic positions. It assigned employees to the positions after all employees who placed a bid for the advertised position, who did not already hold Traveling Mechanic seniority, were interviewed.

The Organization, on behalf of the three Claimants, contends that assignment to the Traveling Mechanic positions is exclusively reserved to the members of its Craft based on seniority.

The Carrier, on the other hand, maintains that the MOA provides it with the right to select the most qualified individuals of the candidates from all crafts for promotion to Traveling Mechanic position.

After careful consideration, the Board concludes that the Organization has not carried its burden of proof. While a review of the evidence strongly suggests that it was the intent of the framers of the MOA to allow Machinists to be considered for promotion to Traveling Mechanic position, the Agreement's language runs counter to the exclusive assignment argument advanced by the Organization.

The lead paragraph of the March 1989 Agreement states, in part, as follows:

"This agreement does not apply to employees governed by provisions of existing agreements between the Company and other labor organizations. Where Traveling Mechanics are employed and represented by the International Association of Machinists & Aerospace Workers, they will be governed by the following:"

Furthermore, on page 4 under the heading of *Classification and Seniority*, the MOA reads, in pertinent part, that:

"Traveling Mechanics, when so employed, will carry seniority as such on a separate seniority roster but all the while employed will continue to retain and accumulate seniority on seniority roster from which promoted."

Therefore, employees selected do not come exclusively from the Machinist craft. On that same page, the rights of an employee who hold Machinist seniority were addressed:

"Traveling Mechanics who have established seniority as a machinist and who, as a result of abolishment of Traveling Mechanics' position, are unable to hold position of Traveling Mechanic and thereby revert to the Machinist craft from which promoted, are in possession of displacement rights in accordance with their seniority at this home point."

Accordingly, the Board must conclude that employees from other crafts may be promoted to Traveling Mechanic positions.

Then, on page 5 of the MOA, under the heading *"Promotion,"* it provides, in pertinent part, that:

"Assignment shall be made on the basis of skill and ability, these being equal, seniority will govern."

Any fair reading leads to the conclusion that this is broad contractual language. It provides the Carrier with the unilateral right to determine who is the best qualified from those who make a bid. It is not restricted to Machinists.

In summary, absent a showing of an abuse by the Carrier of its discretion, the claim must be denied.

AWARD

Claim denied.

ORDER

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 18th day of May 1998.