

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated the provisions of agreement in effect by assigning junior B. & B. mechanic O. E. Arnold to the temporary position of Assistant B. & B. Foreman, Wymore Division, during the period August 4th to 9th, 1941 inclusive, instead of assigning senior qualified B. & B. mechanic D. E. Zimmerman;

(b) That B. & B. mechanic D. E. Zimmerman shall be paid the difference between what he received as B. & B. mechanic and that which he should have received as Assistant B. & B. Foreman during the period August 4th to 9th, 1941, inclusive.

EMPLOYEES' STATEMENT OF FACTS: During the period August 4th to 9th, 1941 inclusive B. & B. Foreman Finley of B. & B. gang No. 1 was absent from the gang making bridge inspection. A carpenter was assigned as an Assistant Foreman to supervise the work of Gang No. 1 during the absence of Foreman Finley.

B. & B. mechanic O. E. Arnold with seniority as mechanic as of August 1, 1928 was assigned as Assistant B. & B. Foreman during the days in question.

B. & B. mechanic D. E. Zimmerman holds seniority rights as such as of June 16, 1925 and has since 1930 served as Assistant B. & B. Foreman on various occasions.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rules of Agreement in effect between the Carrier and the Brotherhood that are pertinent and governing in this case are Rules 3 and 19 reading:

"RULE 3. Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the railroad, and may be exercised only as hereinafter provided."

"RULE 19. Promotions shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail."

As stated in the Employees' Statement of Facts, an Assistant B. & B. Foreman was assigned in B. & B. Gang No. 1 for 6 days in August, 1941. B. & B. mechanic O. E. Arnold with seniority as mechanic as of August 1,

seniority rosters are a positive negation of the claim to the status of senior qualified B. & B. mechanic? Certainly not, as the seniority rosters are the agreed upon record of seniority. The claimant definitely was not the senior qualified mechanic.

In conclusion, it is the position of the Management that:

- (1) The service in question was temporary—not more than thirty days,
- (2) The position could be filled without bulletining it (Rule 27),
- (3) There was no employee of the classification involved in the seniority district who was unassigned,
- (4) The claimant was not the senior B. & B. mechanic; nor was he qualified for the position in question by reason of seniority or otherwise,
- (5) The claimant was assigned in the highest classification in which he held seniority,
- (6) The circumstances did not involve a matter of promotion under the terms of the agreement rules, and,
- (7) Neither claim (a) nor (b) can be sustained in view of the facts and the clear provisions of the agreement.

OPINION OF BOARD: By this claim the Petitioner challenges the regularity of the assignment of B. & B. Mechanic Arnold, with seniority date of August 1, 1926, to the temporary position of Assistant B. & B. Foreman from August 4 to 9, 1941, inclusive. The claim is asserted on behalf of Zimmerman, a duly assigned B. & B. Mechanic with seniority date of June 16, 1925, who also claims seniority as Assistant B. & B. Foreman. The Carrier questions the Claimant's status as Assistant Foreman, but we think the preponderance of the evidence mitigates against that proposition. A roster, corrected to January 1, 1931, and disclosing that the Claimant acquired seniority status as Assistant Foreman on June 1, 1930, is before us. Under Rule 16 (c) of the 1927 Agreement, then in effect, rights under this roster become fixed 30 days after it was posted. The fact that subsequent rosters omitted that classification is of no special significance. This may have been due to any number of circumstances. In any event, the roster in evidence must be accepted and respected, in the absence of a showing that it has been abrogated; and there is no such showing here.

The effective Agreement of June 1, 1938, contains many rules pertaining to the various aspects of the subject of seniority, but it is only necessary to refer to two of these. Rule 27 has particular reference to temporary assignments and reads:

"New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining except that senior unassigned available employees in the seniority district will be given preference."

The above Rule accomplishes two purposes: it relieves the Carrier of the obligation of bulletining the new positions and vacancies described therein; and, at the same time, it creates in the senior unassigned available employees a preferential right to such temporary assignments. In Award 1774 this Board construed the word "unassigned," as used in this Rule, to mean an employee who was not assigned to and regularly working any position under the Agreement. Here, however, both the Claimant and Arnold were regularly assigned B. & B. Mechanics when the vacancy was filled. We must, therefore, look elsewhere for a determination of their respective rights.

The answer is to be found in Rule 21 (g):

"Consideration in filling preferable positions (in regard to location or otherwise), not bulletined, will be given to senior employees."

Rule 21 (g) is general in scope and, as far as this case is concerned, it must control unless its application is limited by Rule 27. The limitations contained in Rule 27 do not relieve the Carrier from the obligation to respect seniority; it merely recognizes the superior rights of senior unassigned available employees. See Awards 2490 and 2690. Since there is no showing that Arnold was the senior unassigned available employee, within the meaning of Rule 27, it follows that the Claimant's seniority should have been recognized and respected by virtue of Rule 21 (g).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.