Award No. 4503
Docket No. MW-4288

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) That the Carrier violated the provisions of Article 12 (m) of the effective agreement when it did not permit Mr. W. A. Meeks to displace Mr. B. P. Wilson as highway Crossing Watchman at Fairchild Street, Danville, Illinois, on February 21, 1947;

(2) That Mr. W. A. Meeks be permitted to displace Mr. B. P. Wilson as Crossing Watchman at Fairchild Street and that he be allowed pay at the Crossing Watchman's rate from February 21, 1947, to such time as he is permitted to make this displacement.

EMPLOYES' STATEMENT OF FACTS: Mr. W. A. Meeks has been employed as a Section Laborer on the Chicago and Eastern Illinois Railroad since March 6, 1924. In the month of March, 1929, he sustained an eye injury which required removal of the eye. Because of an injury sustained while on duty in August, 1934, it was necessary that the little finger on his left hand be amputated. However, Mr. Meeks continued working as a section laborer until March 1, 1938, when he was required because of his physical condition to take a position as Target Tender at Danville Junction.

Mr. Meeks continued working on this position until February 20, 1947, when the position was abolished. When this position was abolished, Mr. Meeks attempted to displace Mr. B. P. Wilson, who was employed as a Crossing Watchman at Fairchild Street. However, he was not allowed to displace Mr. Wilson.

Both of the above named employes are, in accordance with the provisions of the effective agreement, carried on the Section Laborers' seniority roster, W. A. Meeks having seniority date of March 6, 1924, and B. P. Wilson having seniority date of November 4, 1924.

At the present time, W. A. Meeks is not physically able to perform the duties required of a Section Laborer.

Agreement dated May 15, 1925, and subsequent supplements between the parties are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Crossing watchmen are considered as coming within the Track Sub-department and in accordance with Article 14 of the effective Agreement, crossing watchmen are shown on the same seniority roster as trackmen.

cifically exempts the application of the general rule of promotion and seniority to the position of crossing watchman." Article 12 (m) of the effective agreement specifically exempts positions of crossing watchmen from the rules for promotion and seniority, and under the circumstances it is not required that Mr. Meeks be permitted to displace Mr. Wilson.

The Carrier's position in this respect is further supported by the decision in Award 3233, based under a similar rule, wherein it was held that the rule of seniority did not apply in filling vacancies in such positions.

It is the Carrier's Position:

1. The language of Article 12 (m) is clear and its intent obvious.

2. That under the language in question, employes coming within the scope of the effective agreement may not exercise seniority for assignment to vacancies for crossing watchmen, or to displace employes assigned to such positions.

3. That while the rule permits the Carrier to remove able-bodied employes from positions as crossing watchmen when an incapacitated employe is to be provided for, it does not grant to the employes the right to exercise displacement rights in the manner here contended.

4. That in the case here at issue, the incumbent of the position in question was found to be incapacitated for his regular duties, and there is no justification under the rules for removing the man thus assigned for one holding an earlier date on the seniority roster.

The Carrier submits that the agreement rules cited by the employes in the Statement of Claim does not provide that W. A. Meeks shall be permitted to displace B. P. Wilson as Crossing Watchman, and we respectfully request that the claim be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: W. A. Meeks, claimant, had been employed as a section laborer, but became incapacitated and on March 1, 1938 was assigned to a position of target tender at Danville Junction. That position was abolished February 20, 1947. Then Meeks sought to displace one B. P. Wilson, who held the position of crossing flagman at Fairchild Street, Danville, Illinois. Further facts appearing in the record will be referred to in later portions of this Opinion.

The rule applicable to a decision on this docket is clearly that contained in Article 12 (m), which reads as follows:

"The rules for promotion and of seniority will not apply in assignments to positions such as crossing watchmen and crossing gatemen, track or bridge watchmen, target men, or watchmen at non-interlocked crossings. Vacancies or new positions of this class will not be bulletined and, in filling such assignments, employes from any department of service on the railroad who are incapacitated or unable to continue in their usual work will be assigned in preference if competent and physically able to perform the duties required.

In case of a vacancy in a town or location where there is more than one such position, the employes in similar positions in such town or location will be given preferred consideration in filling such assignment, and the new appointee will be placed in the vacancy created by any changes thus made.

If no injured or incapacitated employes are available when a vacancy occurs the vacancy may be filled subject to displacement

later when an injured or incapacitated employe is to be provided for."

Although the Employes contend that because Meeks has seniority over Wilson as a section laborer, on which seniority roster they were both carried as of January 1, 1947, he has the right to displace Wilson, we think it is clear that seniority has no bearing on the ultimate disposition of this claim. (See Awards 3233 and 1417.) The sole issue is whether or not Wilson was incapacitated at the time when Meeks sought to displace him.

There is no doubt that Wilson was assigned to the disputed position at a time when he was not incapacitated with respect to the performance of duties as a section laborer. Hence, we think it is quite clear that he occupied that position subject to displacement by an incapacitated employe, unless it can be affirmatively shown that since the time of such assignment he had become incapacitated and was so incapacitated when his displacement was sought.

On the question of Wilson's incapacitation, we find in the record a letter from Carrier's Assistant to General Manager, pertinent part of which reads as follows:

> "In the conference on August 13th we mentioned to you that the Supervising Officers were of the opinion that Mr. Wilson was physically incapacitated for employment as a section laborer. **In line with our conversation,** Mr. Wilson was instructed to report to the Chief Surgeon for examination under date of September 9th, and we are now in receipt of the following report:
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> > 'May continue to work as crossingman. Not able to work as section man on account of physical condition—general debility—does not have strength for this type of work.' " (Emphasis supplied.)

The physical examination above referred to was not made until September 9th, almost seven months after the date Meeks attempted to displace Wilson. May we consider it as relevant evidence concerning Wilson's condition on the 20th of February. Like senility, general debility is progressive in character. Its existence, generally speaking, is not attributable to one specific factor, as is the case with disabilities or limitations of function resulting from trauma. That being so, the findings of a medical examiner on a given date with respect to such a condition have a definite relevancy with respect to the existence of the condition at a reasonable time prior thereto. Now then, it is to be noted, from the letter above quoted, that Wilson's supervising officers were of the opinion that he was incapacitated for employment as section laborer and that opinion was clearly formed at some date prior to the medical examination. It does not necessarily require the expert medical eye to detect the existence of general debility, since that is just another word for feebleness. Hence, the layman's observation with respect thereto is entitled to some weight. From the emphasized language in the above quoted letter, it seems apparent that as a result of discussion with the General Chairman, Mr. Wilson was instructed to undergo medical examination in order to determine whether or not expert medical opinion would support the views of the supervising officers. That it did, is apparent from the doctor's report. We think the factors above mentioned, coupled with the fact that Wilson's incapacitation was not questioned by the Employes in their original submission where they relied solely on seniority, support the conclusion that Wilson was incapacitated in February when claimant sought to displace him. That being so, under the provisions of Rule 12 (m), as we construe it, we are constrained to deny the claim.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.