

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier has violated the effective agreement by not allowing Welder John Calo, Chicago Terminal, to displace Welder J. J. Anderson on or about February 17, 1948.

(2) Welder John Calo be allowed the right to displace Welder J. J. Anderson and that he be reimbursed for all wage loss suffered by him because of Carrier's violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: The welder's roster dated June 25, 1947, shows John Calo with welder's seniority date of June 11, 1942, Rank No. 8, and as a welder's helper April 11, 1929, in Rank No. 6, and J. J. Anderson with a seniority date of welder as of March 17, 1944, Rank No. 11, and as a welder's helper June 10, 1940, Rank No. 11. (We attach as Employees' Exhibit "A" roster dated June 25, 1947.)

On November 21, 1947, Welder John Calo was laid off in a force reduction as a welder in the Chicago Terminal. He requested that he be allowed to displace J. J. Anderson, his junior, on the welder's roster. The Carrier declined Mr. Calo's request, contending that John Calo had no seniority as an electric welder and, therefore, could not displace J. J. Anderson.

The seniority roster makes no separation between the electric welder and the acetylene welder.

Rule 6, paragraph (a) of the effective agreement states as follows:

"An employe of higher rank than laborer in the Track Department will have the right to displace the junior employe of the same rank within his seniority district and must exercise his seniority in such rank before displacing the junior employe in the next succeeding lower rank, above that of laborer.

"Where an employe above the rank of laborer has exhausted his seniority rights in an effort to place himself in ranks above that of laborer, he will have the right to displace a laborer with less seniority upon which employed in the rank above that of laborer."

Under date of October 16, 1939, an understanding was reached between the parties to this agreement to the effect that:

The reasoning advanced in Third Division Award 592 is substantiated in Opinion of Board of Third Division Award 3668 reading:

"The presumption of Douglass' qualifications that arise by reason of his many years of service as a foreman is not necessarily conclusive and it relates primarily to the types of operation of which he has been in charge. This fact is evidenced by the agreement of the parties wherein, under circumstances such as here, it leaves that question to the discretion of the carrier subject, of course, to the condition that it must not abuse that right. Here we find the position for which Douglass bid much broader in its scope of operations than those covered by his previous work. It involved the supervision of classes of work for which he has had no previous experience."

The facts in the instant case are analogous to those covered in Third Division Awards 1365 and 3668, i.e., Claimant Calo desired to displace on a position on which he had not acquired right thereto as revealed by the seniority roster. Moreover, Claimant Calo was not qualified as an electric welder.

The Carrier asserts that its action in not permitting Claimant Calo to displace a qualified electric welder was in accord with the past practice on this property, the existing rules agreement and awards of this Division. The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 21, 1947, Claimant Calo, with classification as welder, was laid off in force reduction and sought to displace Anderson by virtue of seniority. This was declined by the Carrier on the ground that Claimant had no seniority as electric welder to which work Anderson was assigned.

The effective Agreement names only the position of track welder in that classification. Rule 23 states that "Positions of track welders will be bulletined to track welders only. Positions of track welder helpers will be filled from employees in the track department, but need not be bulletined." The submission shows that the Carrier proposed a Memorandum Agreement to establish separate classifications for electric arc welders and acetylene welders but that it failed of adoption.

The then current roster of employees covered by the Maintenance of Way Agreement listed all welders in the order of their seniority dates. Thereon Claimant appears as date 6-11-42, Rank 8, and Anderson appears as date 3-17-44, Rank 11. After the names of Anderson and two others,—but not that of Claimant—appeared an asterisk (*), and at the bottom of the roster also appeared an asterisk (*) followed by the words: "Electric Welders." In the list of welder helpers on the roster, which also showed dates and rank of seniority, there was no such indication by asterisk (*) or otherwise.

Rule 6, paragraph (a) of the effective Agreement reads in part:

"An employe of higher rank than laborer in the Track Department will have the right to displace the junior employe of the same rank within his seniority district and must exercise his seniority in such rank before displacing the junior employe in the next succeeding lower rank, above that of laborer."

Under date of October 16, 1939, it was agreed between the parties here that:

"Hereafter welders and welder helpers when laid off will be permitted to displace any men in their class junior to them on seniority district where employed."

The Agreement refers to track welders only, as of one class. The roster discloses only one seniority list of welders with Claimant's seniority over Anderson shown thereon and his higher rank specifically numbered. Under the rule he had the right to displace the junior employees of the same rank and

under the specific Agreement, when laid off, should have been permitted to displace Anderson who was in his class and junior to him. Claimant's request to displace Anderson was denied and the Acting General Chairman supported his claim. The Carrier's denial of the Chairman's request was based not on lack of qualification but on asserted understanding "for many years by mutual agreement * * * that acetylene welders would not be permitted to displace electric welders." The evidence tendered did not support this contention, especially in view of the failure of adoption of the proposed Memorandum specifically so providing.

It is now asserted by the Carrier that Claimant was not qualified to do electric welding, because he had no experience except at acetylene welding on their property, while it is asserted by the Organization that Claimant was qualified to do electric welding through doing that work while in the military service during the three years when he was furloughed by Carrier account military service. It is shown that there is a five cent pay differential for electric welders, but that implies no separate seniority rating.

True, the Carrier is not required to entrust operations requiring special skill to unskilled hands, and where there is a bona fide question the ultimate determination of qualifications is its responsibility and prerogative. Here, however, Claimant was denied the position not because incompetent but on the mistaken ground of lack of seniority. Whether he was qualified was not known and was not determined. This was not a task requiring supervision for which Claimant was without experience, as in Award 3668, nor one involving the operation of costly and complicated equipment at which Claimant was admittedly without experience, as in Award 592. Rather it involved the factual question of ability to do electric welding, which could readily be ascertained, and which was indicated by his military record.

Accordingly, we think Claimant should be allowed to displace the junior welder and be reimbursed for wage loss and that his right to continue in the position be determined by fair and unprejudiced test.

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 Agreement was violated.

AWARD

Claim (1) sustained. Claim (2) sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD •
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4784

Docket No. MW-4713

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees.

NAME OF CARRIER: Illinois Central Railroad Company.

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Award is predicated on the conclusion that Calo's right to displace Anderson depended on his seniority and his fitness and ability; that his seniority must be determined by the 1947 Seniority Roster then in effect, whereon Carrier acknowledged Calo's seniority as a welder, without distinction in rank or seniority between electric and acetylene welding; that Carrier's classification of Calo on its Roster as a welder established the presumption that he was fit and qualified for any work in that classification, and the burden rested on the Carrier to demonstrate his inability properly to fill the assignment which he sought therein. Whether test for that purpose should be given at once or after long delay rested solely with the Management, but until his lack of ability was determined Calo was entitled either to the assignment or to the wage belonging to it. Otherwise by claim of lack of qualification and delay in its determination Carrier could completely nullify the right to displace rule.

Therefore the Award contemplated and requires payment to Calo for his wage loss resulting from being denied the right to displace Anderson from the date of his application therefor to date of test and determination of his lack of qualification or until his assignment to the position.

Referee Mortimer Stone who sat with the Division, as a member, when Award No. 4784 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.

[1250]