

Award No. 5164

Docket No. SG-4988

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of The Pennsylvania General System Committee that all time, straight and punitive, made by Mr. C. A. Albright, Maintainer, Telegraph & Telephone, headquarters at Perryville, from January 22, 1947, until Mr. S. J. Sterrett, senior to Mr. C. A. Albright, is permitted to take the position of Maintainer T. & T., headquarters at Perryville.

EMPLOYEES' STATEMENT OF FACTS: The claimant, S. J. Sterrett, endeavored to displace C. A. Albright, Maintainer Telegraph & Telephone, with headquarters at Perryville, as a result of force reduction on January 22, 1947, S. J. Sterrett being senior to C. A. Albright.

The territory covered by the position of Maintainer at Perryville extends from Mile Post 33 to Back River, including the Columbia and Port Deposit Branch, and the Maintainer on this territory is provided with a truck for the purpose of carrying tools and gas for communication cables.

S. J. Sterrett has held this same position of Maintainer T. & T. at Perryville, on a former occasion, for about five years, so there can be no question of qualifications involved. At no time has the Carrier shown that S. J. Sterrett is not a qualified T. & T. Maintainer. In spite of this fact, however, he was not permitted by the Carrier to displace C. A. Albright because the Carrier contends he is not qualified to operate an automobile truck.

There is an agreement between the parties involved in this dispute bearing effective date of June 1, 1943. We understand there is a copy of this agreement on file with this Board and request is made that it be made a part of the record in this dispute.

This claim has been handled in the usual manner on the property without reaching a satisfactory settlement.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the Carrier did not comply with the provisions of the agreement when it refused to allow S. J. Sterrett to displace C. A. Albright as Maintainer as Telegraph & Telephone with headquarters at Perryville. As a result of a force reduction on January 22, 1947, Claimant Sterrett was entitled to displace C. A. Albright under the provisions of Article 4, Section 8 (a) and (b), as he holds seniority in that class over C. A. Albright.

said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the applicable Agreement was not violated when the Claimant was not permitted to displace C. A. Albright from the position of Maintainer T. & T., headquarters, Perryville, Maryland, on January 22, 1947.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The General System Committee of the Brotherhood makes this claim in behalf of S. J. Sterrett for all time, straight and punitive, made by C. A. Albright, Maintainer, Telegraph and Telephone, at Perryville, Maryland, since Jan. 22, 1947, and until such time as Claimant, who is senior to Albright, is permitted to take over the position of Maintainer, Telegraph and Telephone, at Perryville, Maryland, now held by Albright.

The record shows that as of Oct. 1, 1946, Claimant had seniority class rating as a mechanic. See Art. 4, Section 1(c) of the parties' Agreement. On that day, due to force reduction, he was out of a job and sought to displace Albright. This the Carrier refused to let him do. He made no protest thereto nor did he appeal therefrom but accepted employment as a Helper, seniority class Art. 4, Section 1(e). On Jan. 22, 1947, he was again without a job due to force reduction and again sought to displace Albright. Carrier again refused to permit him to do so. He protests this latter action of the Carrier and has appealed therefrom.

Displacement as here sought by Claimant is based on seniority classes and must be exercised within a certain length of time. See Art. 4, Section 8(a) of the parties' effective Agreement. If Claimant wished to question Carrier's right to refuse his request to displace Albright, he should have appealed from its action of Oct. 1, 1946, for on Jan. 22, 1947, he was no longer qualified to displace him because of his having accepted the position of Helper. See Art. 4, Section 8 (b & c).

In view of the foregoing, we do not in any manner pass upon the question of whether or not it was proper for Carrier to include in the qualification for the position the ability of the occupant to operate a motor vehicle and to have a license for that purpose.

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 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 20th day of December, 1950.