Award No. 5669

Docket No. MW-5653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier has violated the effective agreement by not allowing Welder R. E. Spencer, Springfield Division, to displace Welder B. B. Edwards on or about November 1, 1947;

(2) That Welder R. E. Spencer be allowed the right to displace Welder B. B. Edwards and that he be reimbursed for all wage loss suffered by him because of the Carrier's violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: R. E. Spencer is a welder on the Springfield Division with a seniority date as a welder of July 6, 1942.

On November 1, 1947, Welder Spencer was laid off in a force reduction. He requested that he be permitted to displace Welder B. B. Edwards, his junior. The Carrier has refused to allow this displacement. As a result, Welder R. E. Spencer has been required to work in the welder helper's rank since that date.

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

Rule 6, paragraph (a) of the effective agreement reads 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 on the Supervisor's district upon which employed in the rank above that of laborer."

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

for, it is apparent he would have applied for the position when it was bulletined in July 1947. Moreover, General Chairman Young, representing this craft, has interceded with the undersigned in the last three months endeavoring to get Claimant Spencer to work as an electric welder helper to permit him to gain experience so he can ultimately qualify as an electric welder. Surely, there is no fair basis for any award that would entitle the claimant to a penalty claim when it is admitted he is not yet qualified to perform the work of the position for which he aspires.

The Carrier asserts that its action in not permitting Claimant Spencer 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.

All data in support of the Carrier's position have been presented to the Employes in correspondence or discussion in conference and are made a part of the question in dispute.

OPINION OF BOARD: This case involves the displacement rights of welders. The Agreement makes no distinction between the acetylene welders and electric welders except for a 5c wage differential in favor of electric welders. Rule 23 which lists "positions to be bulletined" makes no distinction between acetylene welders and electric welders. Rule 14 requires rosters of employes of each sub-department to be separately compiled by seniority districts and makes them open to protest for 60 days from date of issue.

The 1947 roster on the Springfield Division makes no distinction between acetylene welders and electric welders and shows Claimant with a rank of "6" and Edwards with a rank of "7".

In July 1947 Edwards, being the only welder who applied, bid in a welder position which involved electric welding.

In November 1947 Claimant was laid off in force reduction and, although he had never worked at electric welding, requested that he be permitted to displace Edwards. The Carrier refused to allow this displacement and, as a result, Claimant was required to work in the welder helpers' rank.

There is nothing ambiguous or indefinite about either the Agreement or the controlling roster. Neither makes any distinction in rank or seniority between acetylene and electric welding (see Award 5520). Nor does Rule 6 which entitled Claimant to displace Edwards.

The contentions advanced by the Carrier have been adversely determined by Award 4784 between the same parties on the same property involving an identical claim during the same year in another seniority district.

Here as in Award 4784 there is no showing that Claimant's right to hold the position was ever determined by "fair and unprejudiced test." (Compare Award 5637 and awards cited.)

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 the Agreement was violated as above found.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 5669

DOCKET NO. MW-5653

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employes.

NAME OF CARRIER: Illinois Central Railroad Company.

Upon application of the Organization, to which the Carrier has made reply, that this Division interpret the above Award in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, we dismiss the application for the following reasons:

This claim arose November 1, 1947 when Claimant was laid off in force reduction and attempted to displace another employe.

An identical claim arose November 21, 1947 between the same parties on the same property in another seniority district. This latter claim reached us first and was disposed of by Award 4784 which held, as we did in Award 5669, that the Claimant was senior and therefore could not be deprived of his right to displace except by a fair and unprejudiced test which he had never been given because of the Carrier's initial erroneous conclusion that he was junior. Award 4784 was dated March 21, 1950.

In the light of Award 4784 the Carrier gave the Claimant in this case a test on June 1, 1950, determined that he was not a qualified electric welder, paid the wage loss suffered by Claimant from the date he filed his claim on November 1, 1947, to the date of the test on June 1, 1950, but persisted in the refusal to permit him to displace the junior.

The notice of intention to file the ex parte submission in this case was filed here on May 31, 1951. The record before us was entirely silent on the subject of the test given on June 1, 1950: neither party disclosed it and Award 5669 was made in ignorance of it.

The Organization's request for an interpretation seeks reimbursement for wage loss suffered until Claimant is permitted to displace the junior or until "it is now determined by a fair and impartial test that he does not have the potential ability to perform the duties of the position in question." Such being the request, the only question tendered here is whether the test was "fair and unprejudiced."

The Award adjudicated the Claimant's seniority rights in his favor but conditioned them upon his ability to pass a fair and unprejudiced test. Before the claim reached us the Carrier had paid the wage loss suffered until a test was given. This was tantamount to a confession of the seniority, but left the condition with respect to ability in dispute. Whether the condition had been satisfied, that is, whether the test was fair and unprejudiced, is not a question of interpretation of the Award but simply a question of the appli-

cation of the terms of the Award to facts which existed and were known before the case ever got here. It was a fact question that could and should have been adjudicated by the Award, if the Claimant had put in issue before us the only real issue left in dispute with respect to the claim.

Our conclusion therefore is that this is not a proper request for interpretation of an Award within the meaning of Section 3, First (m), of the Railway Labor Act; and that the application should accordingly be dismissed.

Referee Hubert Wyckoff, who sat with the Division as a member when Award No. 5669 was adopted, also participated with the Division in making this ruling.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.