

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the agreement when it permitted Bridge and Building Foreman T. G. Jones to displace First Class Carpenter C. C. Sauls as the result of an individual and verbal agreement between the Carrier and Foreman T. G. Jones permitting him to relinquish his position as Bridge and Building Foreman;

(2) C. C. Sauls be restored to the position from which he was improperly displaced and compensated for all loss of earnings incurred as a result of his being improperly displaced.

EMPLOYEES' STATEMENT OF FACTS: Mr. T. G. Jones was employed by the Carrier as a Bridge and Building Foreman, but subsequently became dissatisfied with the position and inquired of his superiors as to whether he could and/or would be permitted to relinquish his position as a Bridge and Building Foreman and to thereafter displace a first class carpenter.

He was subsequently advised by some Carrier official that he could and would be permitted to relinquish his position as a Bridge and Building Foreman and to displace a first class Bridge and Building Carpenter.

Accordingly, in accordance with the Carrier official's advice, Mr. Jones ceased working as a Bridge and Building Foreman at the close of the work day April 15, 1952, and on the following day commenced working as a first class carpenter. As a direct result, the claimant was required to terminate his work as a first class carpenter and to accept service as a second class carpenter at a lower rate of pay.

Permission to relinquish his position as a Bridge and Building Foreman was granted to Mr. Jones without any consultation, negotiation or agreement with the duly accredited representatives of the Employees.

The Carrier's action was protested on the basis that agreement provisions did not permit an employee to voluntarily relinquish a position and to thereafter exercise displacement in a lower rank and that displacement rights are only acquired in force reduction under the provisions of the effective agreement.

those employes who have acquired it; it is their individual property. The carrier does, however, have a very deep and abiding interest in seeing that seniority which an employe has acquired is protected, and that he is accorded every right to which such seniority entitles him.

All data submitted in support of the Carrier's position in connection with this case has been presented to the duly-authorized representatives of the employes, and is made a part of the particular issue here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioners contend that the basis of this dispute arose when Carrier permitted Mr. T. G. Jones to relinquish his position as a Bridge and Building Foreman and to thereafter displace Claimant on a position of first class Bridge and Building Carpenter without any consultation, negotiation or agreement with the duly accredited representatives of Employes. It is contended that the only issue is whether or not an employe may properly exercise displacement rights when no force reduction or abolishment of positions is involved. Cited is Rule 26, "Reduction in Force" of the Agreement on the theory that it is the only rule in the effective agreement which is applicable to displacement privileges.

The position of Respondent Carrier is that first class carpenter in Foreman Boyd's gang, on the Western Division, Mr. Jones, was sent to Albemarle Sound Bridge to fill a temporary vacancy in Bridge Gang No. 3, one of the two gangs at that time assigned to the maintenance of that bridge. That this temporary vacancy on Gang 3 subsequently became a permanent vacancy, and was bulletined for bids. The vacancy was bid in by and awarded to Bridge Foreman G. G. Phillips, who was the only bidder for the position. Mr. Jones did not bid on the job. Later, by reason of vacancy on Bridge Gang No. 2, created by Foreman Phillips bidding in and being awarded the position as Foreman on Gang No. 3, the new vacancy was bulletined and no bids were received. Mr. Jones, who had been acting as temporary Foreman on Gang No. 3, was instructed by the Carrier to take over as Foreman on Gang No. 2. Claimant entered Carrier's service as a second class carpenter on January 21, 1946, and held that position until June 16, 1951, when he was promoted to position of first-class carpenter in Boyd's gang to fill the vacancy created by Carrier having sent Jones to the Norther District to fill the temporary position as Bridge Foreman on Gang No. 3. Claimant held his new position until April 16, 1952, when Jones who had relinquished his seniority rights to the Bridge Foreman's position and returned to his former position as first-class capenter in Boyd's gang, exercising his displacement rights to his former position then occupied by Claimant. And that under the controlling Agreement, Jones retained his seniority as a first-class carpenter on instructions of Carrier. Jones entered the service of Carrier as a fourth-class carpenter in June of 1940 and was promoted to first-class carpenter position on February 16, 1946. That no rule in the Agreement supports Petitioner's case.

Under facts here submitted we do not feel that Rule 26 applies as there was no reduction in force. And the Agreement has no rule which directly meets a situation such as here presented, therefore, under such a fact situation, we find no reason to interfere in the result here accomplished. Certainly the man with the greatest seniority record should be protected. Under the facts it is apparent that Mr. Jones sought to be accommodating and did not desire the Foreman's position. It is concluded that he should not be penalized herein. As stated, we find no rule forbidding such an exercise of seniority in the displacement made herein.

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

Claim denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 14th day of April, 1954.