

Award No. 8034
Docket No. MW-7655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY
COMPANY**

STATEMENT OF CLAIM:

(1) The Carrier violated the effective Agreement when, on January 18, 1955, they assigned Mr. C. B. Hughes, to position as Water Service Mechanic by Bulletin No. CE-1, instead of Mr. W. E. Long, a senior employee;

(2) The Carrier be required to place Mr. W. E. Long upon the position as Water Service Mechanic; and

(3) The seniority roster maintained for Water Service Mechanics be adjusted so as to reflect the same information as would have been shown, had the assignment here in dispute been properly made.

JOINT STATEMENT OF FACTS: On January 4, 1955, a position as Water Service Mechanic was advertised by Bulletin No. CE-1.

No bids for the position were filed by employees holding seniority in Group 3 of the Bridge and Building Sub-Division.

The following employees holding seniority in Group 1 of the Bridge and Building Sub-Division filed application for the position:

Name of Employee	Title	Seniority Date
Hollen, O. A.	Helper	February 16, 1948
	Carpenter	November 6, 1950
Long, W. E.	Helper	July 19, 1949
	Carpenter	April 1, 1950
Hughes, C. B.	Carpenter	April 2, 1951

Effective January 18, 1955, Mr. C. B. Hughes was assigned to the Water Service Mechanic Position.

The Assignment of Mr. C. B. Hughes to the position was protested by the Organization. The Carrier denied the request.

ity group in which it occurs then it will be filled by qualified employees from other seniority groups in the respective sub-division before employing new men. Employees assigned will retain their seniority rights in their respective groups from which taken.

(b) Where positions of Crossing Watchmen and Gatemen cannot be filled by employees holding seniority rights as such in Track Sub-Division Group 5, then such positions may be filled by incapacitated employees from any division, incapacitated employees from Maintenance Division to be given preference."

Inasmuch as no bids were filed by employees in any of the three ranks, (a), (b) and (c) of Group 3, the provisions of the second sentence of paragraph (a) of Rule 6 became applicable. The second sentence of the rule provides that qualified employees from other seniority groups in the respective Sub-Division be used to fill the vacancy before employing new men. That was done. Mr. C. B. Hughes was one of the applicants holding seniority in Group (1). The B&B Supervisor decided he was the best qualified applicant and he was assigned.

The representative of the employees protested the assignment of Mr. Hughes, contending Mr. Long to be qualified to handle the position, and that Mr. Long should have been given the job because he happened to be senior to Mr. Hughes in Group 1, where both men held seniority.

The Carrier submits that the applicable portion of Rule 6 does not provide that seniority acquired in one seniority group be observed in the filling of a vacancy in another seniority group. Had the parties to the Agreement intended to so provide they could have and should have included wording that would have accomplished that purpose in the same way it was done in the first sentence of the rule. Had it been their intent to do this the word "senior" would have been inserted just ahead of the words "qualified employees", and the applicable sentence would then have read:

"In the event the vacancy or new position is not so filled by employees in the seniority group in which it occurs then it will be filled by 'senior' qualified employees from other seniority groups in the respective sub-division before employing new men."

However, the rule does not include the word "senior" which would be necessary to support the employees' contention that the seniority standing of employees in one seniority group be observed in the assignment of an applicant therefrom to a position belonging to another seniority group.

It is the Carrier's contention, that the assignment of Mr. Hughes to the position was made in conformity with the provisions of the pertinent and applicable rule of the Agreement, and we respectfully request that your Honorable Board so hold.

(Exhibits not reproduced).

OPINION OF BOARD: The facts in this case are not in controversy. It is agreed that on or about January 18, 1955 C. B. Hughes was assigned to the position of Water Service Mechanic, even though he had less seniority than Claimant W. E. Long. There is no dispute in the record regarding the qualification of both of these men to perform the job in question, although the Carrier does state that Hughes, the one assigned, was the better qualified of the two.

The job of Water Service Mechanic is listed in Group 3 of the Bridge and Building Sub-Division. When the job was posted for bid no bids were received from Group 3 employees. However, three employees from Group 1 bid for the job, including Hughes and Long here involved. Long was senior to Hughes, who was assigned.

Petitioner contends that the carrier violated the agreement when it failed to assign Claimant Long to the position, since he was admittedly qualified to perform the work, and since he was the senior employe of the two. The respondent carrier contends that under the terms of Rule 6(a) of the Agreement there is no requirement that seniority be considered in a situation such as this where the job to be filled is in another group, and no one in the group where the job is located has placed a bid thereon.

As pointed out above, the Carrier relies upon Rule 6(a) for the justification of its action. However, we cannot agree that this is the only rule involved. This cited rule is only one part of the seniority provisions of the agreement. It must be read in the context of the other rules governing seniority—Rules 2, 3, 4, 5, 7 and 8. In so far as possible proper effect must be given to all these rules, in the consideration of the meaning of any one of them.

We think when taken as a whole these seniority rules dictate a sustaining award. Rules 3 and 4 are particularly persuasive of this conclusion; especially Rule 4 which specifies seniority limits which transcend individual groups. It seems highly unlikely that the parties would have made an agreement giving such great importance to seniority, and then suddenly in Rule 6(a) intend that it be disregarded as contended by Carrier.

Under the circumstances revealed by the record, and in view of the applicable rules the claim has merit.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.