

Award No. 10528

Docket No. MW-9727

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the Agreement when it laid off Section and Extra Gang Laborer G. L. Banda from August 27 to September 11, 1956 and again between October 3 and October 10, 1956, during which period junior Section and Extra Gang Laborer E. M. Vasquez was retained in service.

(2) Section and Extra Gang Laborer G. L. Banda now be allowed the exact amount of monetary loss suffered account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On August 27, 1956, the Claimant, who was regularly assigned to Extra Gang No. 13 as an extra gang laborer, was laid off while extra gang laborer E. M. Vasquez was retained in service as an extra gang laborer in that same gang.

The Claimant holds seniority as a section and extra gang laborer as of December 9, 1942, while Mr. E. M. Vasquez holds seniority as an extra gang laborer as of August 1, 1944.

As of August 27, 1956, there was no classification of Truck Driver, Chauffeur, or Laborer-Truck Driver encompassed within the scope of the subject agreement, nor any requirement that section and extra gang laborers must be qualified to operate highway trucks as a condition and prerequisite to recognition of their seniority rights as section and extra gang laborers.

The Carrier's action in laying the Claimant off while retaining a junior employe in service was protested and the instant claim filed and progressed in the usual and customary manner. The Carrier has declined to allow the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

OPINION OF BOARD: This dispute revolves around the refusal of the Carrier to permit a senior Section and Extra Gang Laborer to displace a junior Extra Gang Laborer on the sole basis that the senior Section and Extra Gang Laborer failed to have in his possession a valid State of Texas Chauffeur's License and would not be allowed under the law of Texas to perform services as a truck driver.

The following statement on the property by Claimant Banda stands unrefuted and undenied by the Carrier:

"Further reference to my unsettled time claim of September 1956, against MK&T RR Company of Texas, Maintenance Department. Cause: Discharged from 7 man gang 13, account force reduction; younger man retained on job, namely E. M. Vasquez. I have been regularly employed as Section and Extra Gang Laborer also Assistant Foreman for above company since December 9, 1942. During this some 14 years service never once was I asked if I had in my possession neither was I told by any one that in order for me to continue on the job to get Commercial Operators Drivers License. Later after learning that I was protesting the working of E. M. Vasquez on the job Roadmaster Brooks came to me and asked if I had Commercial Operators License. I told him I did not have at present, that up to this date my job hadn't required me to have the above kind of license, but was sure I could get them as I was able to read and write English very well, and had been a qualified driver of a car in Texas practically all my life.

"Also, Brother Jones, I later learned that back in September or October, 1956, that while E. M. Vasquez was retained on the job in preference to me another employe, namely J. D. Baxley was displaced off regular assigned job as laborer, Section 404, Lorena, Texas, and he immediately asked and was allowed to displace same E. M. Vasquez. At this particular time Baxley did not have Commercial Operators License but was told to get them as he was going to be used as truck driver on the job at times. I understand that he immediately took the required examination and passed, receiving the license after displacing Vasquez."

Considering the problem herein purely from a factual standpoint, we must conclude that Carrier's denial of the claim is unconvincing and not based on valid reasoning. It would have been a simple matter to have afforded Claimant Banda an opportunity to apply for a Chauffeur's License as it appears from his statement that he was otherwise qualified to operate a motor vehicle.

This controversy, then, resolves itself into a simple matter of seniority which is amply covered by the Agreement. The facts in Award 583 are comparable to those in the instant case. The Opinion of the Board in Award 583 is:

"Under the circumstances of this case, involving, as they do, the application of the force reduction rule of the agreement, which provides that in event forces are reduced laborers affected will have the right to displace junior laborers in service on the Supervisor's district on which employed, it was not permissible to retain Lee Jones, section laborer, an employe junior to John Martin, section laborer, who was continued in service when on July 9, 1936 forces were reduced on the section Bluford, Illinois, upon the roster of which both employes held seniority."

The Agreement has been violated and the claim must be sustained. There is a disagreement, however, between the Claimant and the Carrier as to the proper amount to be allowed to the Claimant for the monetary loss that has been occasioned Claimant by the violation of the Agreement. This should be referred back to the property where by a checking of the records a true account of the loss can be ascertained and adjustment made.

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 has been violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.