

Award No. 11857
Docket No. MW-10041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when on August 1, 1956, it failed and refused to permit Laborer Mose Carr to displace Mr. Irvin Bohanan, a junior laborer.

(2) Laborer Mose Carr be allowed eight hours' straight time pay for August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 1956, because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant has established and holds seniority as a laborer in the track Sub-department as of October 1, 1926. Mr. Irvin Bohanan has established and holds seniority as a laborer in the Track Department as of May 1, 1934.

On July 28, 1956, claimant Carr advised Track Supervisor J. A. Hopper that he was cut off in force reduction and requested permission to displace Laborer Bohanan as of the beginning of the work period on August 1, 1956. Even though the claimant held the greater seniority, his request was declined.

Consequently, a claim was filed in behalf of the claimant, requesting that he be allowed eight hours' straight time pay for August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, and 15, 1956, because of the violation of his seniority rights.

The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The pertinent portion of Rule 3 reads as follows:

"ARTICLE II — SENIORITY.

Seniority Datum — Rule 3:

(a) Except as otherwise provided, seniority begins at the time employes' pay starts, on last entrance into Company's service, in the sub-department in which employed.

CONCLUSION

Carrier has shown that:

(a) The effective Agreement has not been violated as alleged, and there is no basis for the claim which the Brotherhood here attempts to assert.

(b) The point here at issue has heretofore been conceded by the Brotherhood (Carrier's Exhibits "B" through "I", inclusive).

(c) While laborer Mose Carr had a contract right to exercise a displacement right in extra gang No. 5, he elected not to exercise the rights afforded him under the Agreement, and by the simple expedient of refusing to exercise such rights here attempts to penalize the Carrier because of his own negligence and stubbornness. The Board cannot permit him to so profit at the expense of the Carrier.

Claim being without any basis and the point at issue having heretofore been conceded by the Brotherhood, the Board cannot do other than make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission, reserves the right, after doing so, to make response thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is interpretation and application of the following provision of a Memorandum of Agreement, herein called the Memorandum, executed by the parties on May 29, 1956, effective June 1, 1956:

"10. When an employe is cut off in a force reduction, or his position or assignment is abolished, or he is displaced, as herein provided, qualifications being sufficient, he shall either (1) displace any employe his junior employed in any seniority rank in which he holds seniority in the same sub-department and seniority district within thirty (30) days from date affected, or (2) file his name and address as provided in Rule 8 of the Foremen's Agreement or Rule 10 of the Laborer's Agreement, as the case may be."

Claimant, a laborer, who had been cut off in a force reduction had seniority dating from October 1, 1926. In the same seniority classification there was a laborer, named Bohanan, with seniority dating from May 1, 1934. Bohanan, at all times material herein, worked on a track motor car used by the Assistant Track Foreman, T. J. Workman.

Claimant, under date of July 28, 1956, sent a note to the Division Engineer which reads:

"Will roll on motor car job with Mr. Workman at Fort Payne on August 1, 1956."

The record in this case supports the following findings: (1) the positions of laborers were bulletined for assignment to gangs and not to specific posi-

tions with defined duties; (2) laborers assigned to a gang performed the work of the gang as directed by the Foreman or Track Supervisor; (3) no laborer had sole ownership of a position, in the gang, having specifically defined duties; (4) traditionally and historically the Assistant Track Supervisor selected, at his whim, a laborer from the gang for work on the Supervisor's track motor car; and (5) neither the Agreement or the Memorandum restricts the Carrier's prerogative to assign work to each laborer in a gang as it chooses. Succinctly, the work of a gang belongs to the gang as a whole.

Carrier admits that Claimant as an employe "cut off in a force reduction" had the contractual right to "displace any employe his junior employed in any seniority rank in which he holds seniority." Also, it admits that Claimant's seniority prevailed over that of Bohanan. But, it refused to honor Claimant's demand for the motor car job which was being performed by Bohanan. It did offer to Claimant the right to exercise his seniority but refused to allow him to specify what work he would do in the gang.

Petitioner argues that the provision of the Memorandum quoted, *supra*, vested Claimant with the right not only to displace a junior employe but also with the right to demand that he be assigned to the particular work being performed, at the time, by the junior employe he chose to displace. We would be persuaded to favor this argument if the junior employe held a position with peculiar bulletined duties.

We note that Claimant made a demand to be assigned to particular work in the gang—not to displacing Bohanan. Under the Agreement no laborer has a contractual right to any particular work of the gang on the basis of seniority. We find nothing in the Agreement or Memorandum which would support a finding that an employe exercising his seniority rights in displacing an employe in the gang enjoys a more favorable position than the displaced employe or other employes in the gang. We will deny the claim.

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 Carrier did not violate the Agreement or Memorandum.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.