

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHARLESTON AND WESTERN CAROLINA
RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when, on June 2, 1958, it recalled Mr. W. D. Caldwell to fill a newly established position of mechanic and failed to either bulletin said newly established position or to recall Mr. Archie Bishop who holds seniority which is superior to the seniority of Mr. Caldwell.

(2) Mr. Archie Bishop now be allowed pay at the mechanic's straight time rate for a number of hours equal to those for which junior mechanic W. D. Caldwell received compensation beginning with June 2, 1958 and continuing until the violation was discontinued and corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. Archie Bishop holds seniority in Group 5 as of December 6, 1948 and is senior in such seniority group to Mr. W. D. Caldwell, whose seniority in Group 5 began only as of January 30, 1956.

Seniority Group 5 includes only Engineers, Machine Operators, Mechanics, Water Service Employees and Motor Car Repairmen, but does not extend to or include welding classes of employees who are within Seniority Group No. 4.

Effective as of June 2, 1958, the Carrier established a new "temporary" position of mechanic, but failed to either bulletin said position or to recall Mr. Archie Bishop, who is senior to Mr. W. D. Caldwell as a Group 5 employee. Instead, the Carrier recalled Mr. Caldwell, who is junior to Claimant Bishop, and assigned him to the aforesaid newly established position.

Consequently, the instant claim was properly and timely presented. The claim was declined and was then properly and timely appealed up to and including the highest officer designated to handle such appeals. All appeals were also denied.

OPINION OF BOARD: On September 6, 1957 Archie Bishop and H. C. Harmon, who both hold seniority in Group 5, were among a group of tractor operators, who were laid off because of reduction of forces. The two men requested that they be permitted to exercise their seniority by displacing an employe who was working as a mechanic. These requests were denied on the grounds that they were not qualified as mechanics. Mr. Harmon filed claim, and the dispute was resolved by an agreement in which he was permitted to exercise his seniority over a junior employe and was given 60 days to demonstrate his ability to perform the work. On May 19, 1958 he displaced Mr. W. D. Caldwell. At a later date, June 2, Carrier recalled Mr. Caldwell to service.

Claim is made by Mr. Bishop that Carrier violated the Agreement when it recalled Mr. Caldwell, his junior in Group 5. Petitioner bases his claim on Rule 20 (c) which reads:

"The seniority of employes included in Section (a) of this rule shall be interchangeable as between employes within the same Group as set out below: . . ."

Carrier takes the position that Mr. Bishop was on furlough and that he was in the role of seeking a position of higher rank. As such, he had to meet the requirements of Rule 19, which provides that promotions be based on ability and seniority. Since management determined that he did not have the required ability, it exercised its prerogative under the Rule of not accepting him. Carrier also argues that Mr. Bishop has no reason to protest since he, too, like Mr. Harmon, was not qualified as a mechanic but unlike Mr. Harmon, had not availed himself of the opportunity to file claim at the time he was refused the position because of lack of qualifications. Carrier justifies its action in recalling Mr. Caldwell on the grounds that he was needed to train Mr. Harmon, who was not qualified to perform acetylene and electrical welding. It points out that Mr. Bishop was a tractor operator, who had no previous experience as a welder; and, consequently, Mr. Caldwell was called in preference to Mr. Bishop. Carrier further urges that Mr. Bishop's and Mr. Harmon's seniority in Group 5 does not qualify them to perform the various duties covered in that Group, as their qualifications are limited to those of a machine operator, whereas Mr. Caldwell is qualified only as a mechanic to repair equipment.

Our first consideration is whether the seniority lists within Group 5 are interchangeable. If so, a machine operator can be called for the position of mechanic. Exhibit A on page 20 of the record includes two distinct lists for Group 5, one of operators and one of mechanics. Carrier, however, in the letter designated as Exhibit 21A states that, ". . . In the future all employes in Group 5 will be shown as being in one group and not divided into two groups as heretofore." We interpret this statement as evidence that the combined groups established a single list of interchangeable employes. Consequently, Mr. Bishop is a senior employe eligible for the mechanic's position under Rule 20 (c).

Even if we accept Carrier's assumption that Rule 19 is pertinent because Mr. Bishop was on furlough and was seeking a promotion, we find that it failed to comply with all the provisions of the regulation. Carrier exercises its prerogative under this rule to reject Mr. Bishop on the basis of ability, but it fails to observe that portion of the rule which grants employes seeking promotion 60 days to qualify for the position. In the case of Mr. Harmon,

whose qualifications were also insufficient, Carrier, by agreement after claim was filed, accorded the 60 days testing period. Mr. Bishop was entitled to the same privilege even though he initially did not file a claim.

The next issue to be determined is whether Carrier had a right to recall Mr. Caldwell and overlook Mr. Bishop, who had seniority. Carrier contends that an employee was needed to tutor Mr. Harmon in welding. Since Mr. Bishop lacked experience in this area, he was overlooked; and Mr. Caldwell was recalled. The record, however, shows that Mr. Caldwell stayed on the job from June 2 to September 24, 1958, well over the 60 day period allowed to determine if Mr. Harmon had the required skills for the job. Moreover, Mr. Harmon states that only one day was spent in assisting him. We further note that Mr. Caldwell was returned as a mechanic and performed work which had accumulated during his absence. From these facts we conclude that the major purpose of Mr. Caldwell's return to service was not solely to train Mr. Harmon, but was to perform other duties. Since his function was to serve as a mechanic, and since Mr. Bishop had seniority on an interchangeable list, Carrier had a responsibility to call Mr. Bishop for the assignment in question. We, therefore, hold that Carrier violated the Agreement of the parties.

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 of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1964.