

Award No. 16071
Docket No. MW-16779

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated Seniority Rule No. 3 of the current Maintenance of Way Agreement when, on September 3, 1965, Division Engineer C. R. Harrell advised Machine Operator W. F. Jennings that he could not roll Machine Operator L. H. Hogan, assigned to System Grading Gang No. 1, which was working on the Carolina Division. (System File No. M-77 M-49.)

(2) The Carrier allow W. F. Jennings, Machine Operator, compensation for all monetary loss suffered by him by such actions and that he be compensated for any expenses incurred by him while he is not allowed to exercise his seniority as provided for in Paragraph (c) of Rule 3.

EMPLOYEES' STATEMENT OF FACTS: Claimant W. F. Jennings has established and holds seniority as a machine operator on the Carolina Division as of September 14, 1953.

Effective August 25, 1965, the claimant was rolled from his regular position of bulldozer operator on System Grading Gang No. 1 which was then working on the Carolina Division.

On that same date, Claimant Jennings addressed a wire message to Division Engineer Harrell which reads:

"8-30-65

Mr. C. R. Harrell D. E.
Savannah, Georgia

Wish to claim rolling rights over Mr. L. H. Hogan on system grading gang No. 1 as bulldozer operator. BD No. 23. This roll due to the fact that grading gang No. 1 has been on Carolina Division over 15 days and that Mr. Hogan stands for job on his home division.

Please advise,

/s/ W. F. Jennings
BD. operator
G. G. No. 1, Elgin S. C."

You did not present any additional support for your position and we reiterated the position outlined in Chief Engineer's letter of February 8th and our letter of April 5th. We advised that we saw no reason for changing our decision of April 5th."

OPINION OF BOARD: Claimant in this case holds seniority as machine operator on Carrier's Carolina Division effective September 14, 1953. Hogan holds seniority as machine operator on Carrier's North Florida Division effective February 18, 1947. On August 25, 1965, Claimant was displaced from his regular job as Bulldozer operator. On August 30, 1965, he made a request in writing that he be permitted to displace Hogan from the position of Bulldozer Operator on System Gang Number 1. His request was summarily rejected.

Petitioner contends that Carrier, by refusing to permit Claimant to displace Hogan, stands in violation of Rule 3, Section (b) of the Agreement between the parties. It states categorically that the cited section limits the exercise of seniority by an employee to the Division under which the employee holds seniority, and does not in any way concern itself with system wide seniority. Therefore, since Claimant held more seniority on the Carolina Division, and the System Gang was working on that Division, he should have been able to exercise that seniority over Hogan, who admittedly held more seniority on his own division, but no seniority on the Carolina Division.

Carrier maintains that Section (b), Rule 3 is inapplicable to the instant case which involves the seniority rights of System Gangs. It further argues that Supplement Number 8, inasmuch as it deals with the specific subject of System Gangs is applicable, and since it is a specific rule, it must prevail over Section (b), Rule 3 based on the principle that special rules prevail over general rules. Carrier arguendo states that its interpretation of Supplement Number 8 that system wide seniority prevails is the only reasonable construction that can be inferred.

Thus the questions to be resolved are whether or not Carrier's action did in fact violate Section (b), Rule 3 of the Agreement or whether its action was consonant with the provisions of Supplement Number 8, thereby making the latter controlling in the circumstances of this case.

Section (b), Rule 3 reads as follows:

"Seniority of operators of machines listed in the Scope will be on the division as of roster of 1941 and subsequent rosters. In force reductions, ability and merit being sufficient, qualified operators will —

1. Have the right to displace a junior operator on the machines on which qualified on the Division.
2. If unable to displace a junior operator on their home Division may, seniority being sufficient, displace a junior operator on the machine on which qualified on the other divisions, during such time that they cannot hold position of operator on their home division.

* * * * *

Petitioner refers us specifically to item 2 of Section (b), Rule 3, cited above, as containing the only exception to the "Confinement of division seniority." It alleges that this section "provides that, in force reductions, during

such time as they cannot hold a position of machine operator on their home division may, seniority being sufficient, displace junior operators on other divisions **during such time that they cannot hold position of operator on their home division.**" They further point out that Hogan had sufficient seniority to hold a position as machine operator on his home division. Hence, Claimant should have been allowed to displace Hogan who held no seniority on Claimant's division but who could have held a position of equal rank on the North Florida Division, which was his home division. We agree with these contentions.

The pertinent portion of Supplement No. 8, which Carrier contends is controlling in this case reads as follows:

SUPPLEMENT NO. 8.

It is hereby **AGREED** that:

* * * * *

System grading gangs consisting of two or more roadway machines, manned by the required number of operators, oilers, or firemen, may be assembled as needed, and such positions will be bulletined to employees over the entire system in Sub-Department No. 4 in the manner as provided in Rule 2, pps. (a) and (b). The successful bidders will establish division seniority only on such system grading gangs and will retain and continue to accrue seniority on their home divisions.

If a vacancy or new position in system grading gang is not bid in by an employee holding seniority, and a new man is employed, his seniority will be attached and confined to the division where the gang is working at the time of such employment."

From an analysis of Supplement No. 8, we cannot find any language which would support Carrier's position that system wide seniority prevails over division seniority. The language of Supplement No. 8 is clear, concise and unambiguous. It states categorically that successful bidders "will establish division seniority only on such system grading gangs and will retain and continue to accrue seniority on their home divisions. There are no provisions in this Supplement which would give an employee system seniority. Bidders are assigned to the system grading gangs in accordance with their division seniority. Hence, in this case, Hogan did not have "system seniority," since neither the Basic Agreement nor the Supplement makes provisions for such a rating. He did have division seniority, which was confined to the North Florida Division. Carrier's action therefore in not allowing Claimant, who had 12 years seniority on the Carolina Division, to displace Hogan, was in violation of Claimant's basic seniority rights. We will sustain the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of January 1968.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 16071,
DOCKET NO. MW-16779**

Award 16071 is in serious error and it is necessary that we register our dissent thereto.

On May 3, 1946, or almost twenty-two years prior to Award 16071, the parties specifically agreed that system grading gangs may be assembled as needed, and established the manner by which positions in such gangs would be filled. The Agreement was basically intended to cover the setting up of such system gangs to work over more than one division throughout the system, regardless of the geographical location. This intent is evidenced by the fact that positions in the gangs are bulletined over the entire system.

There is no provision in the Agreement covering the system gangs under which an employe with less seniority may displace an employe on such system gang who has more seniority as a machine operator, notwithstanding that the system gang may be working on the junior employe's home division. To construe the Agreement to grant such right actually renders the Agreement covering the establishment of system gangs nugatory as there would be no real purpose in setting up system gangs if such were the intent.

The Board has generally adhered to the universal rule of construction that where the language used is susceptible of two meanings, one of which would lead to a logical or sensible result, and the other to an illogical or unreasonable result, the former interpretation is to be preferred as the result intended by the contracting parties. In this case the majority departed from that rule.

Further, the record shows that in the handling of the dispute on the property the Carrier pointed out that since the Agreement of May 3, 1946, covering the establishment of system gangs has been in effect, or for almost twenty years prior to the occurrence giving rise to the claim herein, the seniority of machine operators on system gangs has been handled in the same manner as in the case covered by this Award. This was not disputed or refuted by the Petitioner in the handling of the dispute on the property, and was thus the best evidence of the intent of the parties. The conduct of the parties through the years represented a mutual interpretation of the Agreement, which interpretation should have been adhered to.

The claim should properly have been denied.

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