

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20085
Docket Number MW-20043

Frederick R. Blackwell, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Missouri-Kansas-Texas Railroad Company

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

(1) The Carrier violated Rule 1 of Article 5 of the current Agreement when it failed to assign the position of B&B Lead Mechanic to Mr. Joe B. Hopson on Circular No. 609, dated September 16, 1971.

(2) The Carrier violated Rule 3 of Article 3 of the current Agreement by assigning Mr. R. G. Washington, who holds no seniority on Seniority District No. 3, as B&B Lead Mechanic or B&B Mechanic.

(3) As a result of the rules violations referred to in Parts 1 and 2 outlined above, the Carrier now be required to pay Mr. Joe B. Hopson the difference in rate of pay of what he is receiving as B&B Mechanic and what he should receive as B&B Lead Mechanic; claim to continue from September 16, 1971 until violation is corrected and Mr. Hopson is assigned as B&B Lead Mechanic on Seniority District No. 3. (System File 200-94/2579)

OPINION OF BOARD: When the Carrier advertised a vacancy for one B&B Lead Mechanic on Seniority District No. 3, no bids were received from employees holding seniority in the classification of B&B Department Lead Mechanic. After receipt of a bid from Claimant J. B. Hopson, the Carrier promoted Employee R. G. Washington to the position of B&B Lead Mechanic and assigned the lead mechanic position to him on August 24, 1971. (There is an inconsequential fact dispute over whether Employee Washington bid on the lead mechanic position.) Prior to the vacancy Claimant Hopson established seniority as B&B mechanic on Seniority District No. 3 on March 3, 1970. Employee Washington entered service as a B&B mechanic on a system gang on November 11, 1969; thereafter, he gave up his system seniority and established seniority as a B&B mechanic on Seniority District No. 3 on July 26, 1971. Thus, as between Claimant Hopson and Employee Washington, the Claimant is the senior B&B mechanic on Seniority District No. 3. Also, the Claimant's ability to perform lead mechanic's work has not been questioned by Carrier.

The Employees allege that Carrier violated Rule 1, Art. 3, of the Agreement (Seniority) and Rule 1, Art. 5, (Promotions) by its failure to assign the position of B&B Lead Mechanic to Claimant and, further, that Carrier violated Rule 3, Art. 3, (Seniority Districts) by assigning the position to Employee

Washington. The Carrier's position is that, when Rule 1, Art. 3, Rule 1, Art. 5, and Rule 14, Art. 3, are read in conjunction with one another, the Claimant's seniority is restricted to the classification or group designated as B&B mechanic and, consequently, he has no seniority rights to preference to positions in a different classification or group. Carrier also asserts that the **Employees'** contentions have been resolved adversely to the Employees in prior Awards involving these same parties and same rules. (Third Division Award 11587 and Award No. 19, Public Law Board No. 76.)

The pertinent rules are as follows:

"ARTICLE 3. SENIORITY

Rule 1. Seniority begins at time **employee's** pay **starts** in the respective branch or class of service in which employed, transferred or promoted and when regularly assigned. Employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules."

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"ARTICLE 5. **BULLETINS** AND ASSIGNMENTS

Rule **1**. All positions except those of Track Laborers will be bulletined.

Promotions shall be based on ability and seniority; ability being sufficient seniority shall govern."

"ARTICLE 3. SENIORITY

.....

Rule 14. Seniority for Bridge and Building Department employees shall be separated into four (4) groups as follows:

- Group 1**
 B&B Department Foremen
- Group 2
 B&B Department Lead Mechanics
- Group 3
 B&B Department Mechanics
- Group 4
 B&B Department Helpers"

The particulars of the Employees' argument are well stated in the following extract from the Employees' Reply Brief.

"...Rule 1 of Article 3 unequivocally stipulates that employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules. In this case, the claimant holds seniority as a B&B mechanic dating from March 3, 1970 whereas Washington did not even perform any service on this seniority district until July 26, 1971. Thus, as the term 'seniority ranking' is used within Rule 1 of Article 3, the claimant 'ranks' higher and ahead of Washington. Rule 1 of Article 5, in the clearest possible terms, stipulates that promotions shall be based on ability and seniority: ability being sufficient. seniority shall govern.' The rule does not distinguish between promotions to a position within a classification or seniority group in which an **employee** has not yet established seniority and a promotion to a position within a classification or seniority group in which he had previously established seniority. Furthermore, no such distinction was intended."

The Employees' argument is plausible enough; however, in prior Award 11587 (followed by Award No. 16, Public Law Board No. 76), involving **similar** rules in a promotion dispute between these same parties, this Board held that other rules in the Agreement prevented the promotion rule (Rule 1, Art. 5) from operating in the manner urged by the Employees. In Award 11587 this Board stated:

"In the Agreement before us we note that in Article 3, Rule 1, it is stated that '**Employees** are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules.' (Emphasis ours.) **Immediately** following, in the first sentence of Rule 2 of Article 3 which is quoted supra, we find a circumscription which confines system gang employees seniority rights as to new positions or vacancies to seniority in 'their respective classifications.' Then in Rule 20 of the same Article, supra, it is provided that 'Seniority for Bridge and Building Department employees shall be separated into four (4) groups....' Separately listed as one group is 'B&B Department Foremen.' Reading the Rules together we conclude that no **employee** holding seniority in one of the other three groups has any contractual priority because of such seniority, to be assigned to a permanent position of Steel Bridge Foremen. Therefore, since Claimant, admittedly, had no seniority in the 'B&B Department Foremen' classification, we will deny the claim."

The **Employees** submit that the rules and facts involved in Award 11587 are not the same as those in this dispute and, consequently, that Award has no precedential value in resolving this dispute. Specifically, the Employees point to the elimination of language in former Rule 2, Art. 3, which confined the rights of system gangs to their respective classifications; the Employees also note that Award 11587 dealt with a **system** steel bridge gang, while this dispute involves a district bridge gang.

We do not disagree with the distinctions cited by the Employees, but we do not believe that such distinctions alter the precedential value of Award 11587 in respect to this dispute. Analysis of the foregoing quote from denial Award 11587 makes it clear that the Board's view of Rule 20, (Rule 14, Art. 4, in the instant dispute) was an essential element in the Board's denial of that claim; indeed, we believe the import given Rule 20 by the Board was probably the **gravamen** of the reasoning underlying Award 11587, Rule 20 exists in identical text as Rule 14, Art. 4, in the present Agreement. We shall therefore adhere to our prior ruling in Award 11587 that an employee holding seniority in one of the groups listed in Rule 14 does not thereby establish seniority rights which entitle him to preference in one of the other groups listed in the rule. Compare, though, our sustaining Award 20062 from this same property, wherein Rule 14 was not applicable and wherein an employee with seniority in the classification of assistant section foreman was entitled to preference to a foreman position because of the explicit language of Rule 2, Art. 4, of this **same** Agreement.

For the foregoing reasons we shall deny 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.