

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20206
Docket Number MW-20006

Irving T. Bergman, 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 Foreman to Mr. H. N. Racy on Circular No. 628 issued to **B&B** Department **employees** on Seniority District No. 2, dated October 14, 1971.

(2) The Carrier violated Rule 3 of Article 3 of the current Agreement by assigning Mr. R. G. Miles who holds no seniority on Seniority District No. 2, as B&B Foreman. (System File **100-161/2579**)

(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. H. N. Racy the difference in rate of pay **as** B&B mechanic and what he should have received as B&B Foreman; **claim** continued until violation is corrected, and **Mr.** Racy is assigned as B&B Foreman on Seniority District No. 2.

OPINION OF BOARD: The agreed facts are that claimant held seniority in classification of B&B mechanic in Seniority District No. 2, dating from 1965. G. R. **Miles** held seniority in classification of B&B mechanic in Seniority District No. 1, dating from 1971. Carrier advertised a vacancy **as** B&B Foreman in Seniority District No. 2. No bids **were** received from **employees** holding seniority as foreman. Claimant bid for the position but G. R. **Miles** was selected for **the** vacancy by the Carrier. Seniority in one district is not applicable in a different district. The Carrier concedes that G. R. Miles was not selected by seniority.

The Organization relies upon the Agreement Article 5 Rule 1, and also claims violation of Article 3, Rule 3. It also refers to Article 5, Rule 6, in support of its position.

The Carrier has argued that since no **employee** in the classification of foreman applied for the vacancy, it was not prohibited by the Agreement from assigning an **employee** of its choice. Seniority **is** restricted by the Agreement to the four separate classifications in which

seniority has been earned Article 3, Rule 14. Carrier also contends that the general rule of seniority is limited in its application to the provisions of the Agreement so that claimant's seniority is not extended to the foreman's group.

Article 5 Rule 1, is a general seniority provision which states: "Promotions shall be based on ability and seniority; ability **being sufficient** seniority shall govern." Article 3 Rule 3 restricts seniority by District but that is not an issue, it **being** conceded by Carrier that G. R. Miles was not selected by reason of seniority. Article 5 Rule 6 states: "In filling positions temporarily, as referred to in Rule 4, the following shall be observed:" Rule 4 states that vacancies **known** to be of twenty days or less duration will not be bulletined. It is self evident that the vacancy **as foreman** that was bulletined was not for a temporary vacancy. Accordingly, the issue is narrowed to the application of Article 5, Rule 1.

The Organization has called our attention to prior Awards in which seniority controlled. These referred to work rights **and** are not helpful to our determination of this case, Awards 4076, 4490, 4667, 9647, 4987, 6938, 1611. Other Awards submitted discussed the question of "sufficient" ability as a qualification but that is not the determining factor in **this** case although the Carrier did point out that G. R. Miles had served temporarily in a foreman capacity, Awards 2638, 8181, 11729. Award 1058 considered the general seniority rule to be paramount in the case of a temporary vacancy. Award 1862 referred to a specific provision of the Agreement which preferred the senior qualified **employee** for a temporary vacancy. Award 5231 which denied the claim did discuss the importance of seniority as to individuals rather than to positions.

The Carrier has emphasized P L B No. 176 Award **19** as controlling, between the same parties. In that case a different rule was applicable and the facts indicate that the claimant had previously rejected the position. In our opinion it is not controlling. However, in relating it to the facts of this case, it does indicate that the foreman's vacancy is not available to the mechanic's group by seniority, as a matter of right. Award 11587, between the same parties, does bear similarity to this case in one important respect despite the differences argued by the Organization. On page 25, of the Award, Rule 20 sets forth the separation of seniority in four groups. This is identical with Rule **14** in this Agreement. With Referee **Dorsey**, it was stated, "It is axiomatic that seniority rights, if any, are prescribed in and derive from the collective bargaining agreement." It is concluded 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 Carrier has also submitted for our consideration Awards which hold that the rights and privileges flowing from seniority must be stated in the contract and that there is no inherent right to exercise seniority other than as stated in the Agreement, Awards 1571, 3419, 11587, 15829, 18295, 18686. Award 19752 stated, in substance, that provisions for seniority in an agreement are not proof that seniority be followed under **all** circumstances.

We **are** aware of the importance and value to the individual of his seniority. The extent to which such seniority **may** be exercised is a matter of contract. It is beyond our jurisdiction to add rights and privileges to **employees** in the exercise of seniority which are not clearly set forth as negotiated in an Agreement. We believe that the security and protection afforded by seniority in groups and in districts as set forth in this Agreement does not carry with it the right to enforce seniority as a mechanic in Group 3 into the foremen's Group **1**. Article 5 Rule 1, is not, therefore, applicable to this specific situation.

It is recognized that the word "promotions" in Article 5, Rule 1, should have meaning. But it is not related by the Agreement to vacancies in other Groups which are so clearly and specifically separated as different seniority Groups. We are not at Liberty to add language to the **Agreement** or to speculate upon the intention of the parties when the Language was agreed upon.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

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