

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21558
Docket Number MW-21650

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri-Kansas-Texas Railroad Company

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

(1) The Carrier violated Article 6, Rule 2 of Agreement No. D.P.-357 on November 6, 1974, by not allowing Mr. Ralph N. Heiney to retain his seniority as Foreman when affected by force reduction on November 5, 1974 (System File 200-163/2579-6).

(2) Mr. Heiney's seniority as foreman be restored as of September 17, 1974.

OPINION OF BOARD: Carrier places its defense to this claim squarely on the contention that "an employee affected by force reduction, is required under Article 6, Rule 2, within ten days therefrom, to exercise seniority by displacing a junior employee in his seniority district and in the classified position FROM WHICH HE HAS BEEN DISPLACED and holds seniority, . . ." (Emphasis added.) Rule 2 actually states that, "Employees affected by force reduction will be required to, within ten (10) days thereof, exercise seniority by displacing a junior employee on their seniority district, and in classified positions in which they hold seniority." (Emphasis added.)

Thus Carrier would add to the language of the rule the further restriction, "from which he has been displaced". Absent such additional restriction, the rule does not support Carrier's position in this case. Since such restriction is not found in the rule and this Board cannot add it to the rule, either overtly or under the guise of interpretation, the claim will be sustained.

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;

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~~That~~ this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this ~~31st~~ day of May 1977.

