

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24893
Docket Number MW-24939

Tedford E. Schoonover, Referee

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

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

(1) The Agreement was violated when the Carrier improperly terminated its employment of Mr. S. A. Lewis on or about October 10, 1980 (System File 0-138).

(2) The claimant shall be reinstated with seniority dating from May 19, 1980 unimpaired."

OPINION OF BOARD: This claim arises out of circumstances pertaining to the abolishment of Extra Gang No. 161 effective October 1, 1980. Stanley Lewis, track laborer with a seniority date of May 20, 1980, was employed in the gang. His position, together with all other employees, were abolished when the gang was discontinued in a force reduction.

Claimant Lewis contends he was told on September 30, 1980, the day before the gang was abolished that there were no junior employees he could displace. His contentions are included in a letter dated December 6, 1980 addressed to John Self, General Chairman. His statement is signed also by Craig Larson and Mike Whitman, two other employees in the gang. His letter is as follows:

"Dear Mr. Self:

This letter is to certify statements made to me and other members of Gang #161 on Sept. 30, 1980 at Easley, Mo., concerning future employment with the Railroad by Ass. Roadmaster Jake Ferguson and Mr. Richard Leesman. At that time I was told my seniority would not hold a regular job for me and that there were no junior employees I could displace. As witness to the above statements I present the name and address of other members of Gang #161 listed below.

/s/ Stanley A. Lewis

The above statements are true to the best of my knowledge:
Signed:

Craig R. Lawson
913 Ridge Drive
Warrensburg, MO 64093

Mike Whitman
214 McGoodwin, Apt. #4
Warrensburg, MO 64093"

Claimant contends that he acted on the information as a furloughed employee and filed his name and address with the Carrier as required by Rule 11, Article 3.

Information supplied by the Carrier does not agree with that supplied by Claimant. Carrier presents evidence to the effect that on September 30, 1980, the day prior to abolishment of Extra Gang No. 161, Assistant Roadmaster Jake Ferguson and Richard Leesman, Foreman, showed all employees in Gang 161, including Claimant Lewis a list of men with seniority dates and advised them where they could place themselves. Carrier contends that Mr. Lewis did not have the right under the rules to file his name and address and remain off in force reduction.

Carrier points out that there were junior employees Claimant could have displaced and he was obligated under Article 6, Rule 2 of DP-357 to place himself on a job to which his seniority entitled. The provisions of this rule are:

"With ten (10) days from the date his position was abolished, exercise seniority by displacing a junior employee on his seniority district, and in the classified position in which he held seniority if there were junior employees working in such classifications on his seniority district whom he could displace

or

If there were no junior employees over whom he could exercise seniority on his seniority district, he would then be classified as a furloughed employee, subject to Rule 11 of Article 3."

It is the Carrier position that since Claimant failed within 10 days from the date his position was abolished to exercise his seniority as required he therefore automatically forfeited his seniority for failure to comply with the terms of the Agreement.

A proper determination as to validity of the claim requires weighing and assessing credibility of the evidence presented by Claimant, on the one hand, and the Carrier in opposition. After a full study of the complete history of the claim we are of the opinion that greater credibility lies with the Carrier evidence.

Claimant was a relatively new worker employed for only about 4½ months prior to his extra gang job being abolished on October 1, 1980. In the first place, it strikes us as questionable that he allowed more than 2½ months to go by before making his claim as evidenced by his letter of December 6 to Mr. Self. We are also impressed with the fact that of all the employees in the extra gang whose jobs were abolished, Claimant was the only employee who filed a claim contending wrong information had been given as to bumping rights. In this connection it is notable that the two employees who signed his letter of December 6 did not submit such a claim. It is also important to note their signatures attested only to the information being true "to the best of our knowledge." This is not a positive statement which can be accepted as establishing full knowledge of a situation. Instead, it can more properly be characterized as a broad generalization which omits reference to their real knowledge and is of questionable probative value.

Compared to the above, the reported actions of the Carrier representatives involved are far more credible. In the first place, both Assistant Roadmaster Ferguson and Foreman Leesman are employees of considerable long service as indicated by their positions of supervisory authority. Thus, they can be reasonably expected to be conversant with their responsibilities to inform employees as required by the rules on matters of seniority and bumping rights where jobs are abolished. The signed statement of Mr. Ferguson avers positively that he and Foreman Leesman showed "all employees on Gang #161 including Stanley Lewis, the claimant, a list of men with their seniority dates and told each person who he could bump and who he couldn't bump on all gangs." Such actions were a part of their regular functions where gangs were abolished in force reductions. Evidence that they fulfilled such a routine responsibility impresses the Board as of greater probative value in the circumstances reviewed herein.

In disputes such as this it is well established that ours is not the responsibility to resolve conflicts in evidence. On the contrary, by examining evidence and using such facts as to the circumstances as are available we endeavor to determine respective credibility questions. In this case the preponderance of credible evidence is on the side of the Carrier and thus the claim must be denied.

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

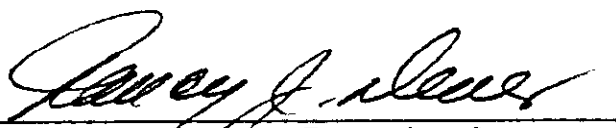
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1984.