

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28469  
Docket No. MW-27148  
90-3-86-3-170

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(National Railroad Passenger Corporation (Amtrak)  
( - Northeast Corridor

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

(1) The Carrier violated the Agreement when it failed and refused to permit Camp Car Attendant R. Jones to displace a junior camp car attendant on May 15, 1985.

(2) Because of the violation referred to in Part (1) hereof:

'We are requesting that Mr. Jones: 1. Be allowed to exercise his camp car rights, 2. That he retain his seniority on the camp car roster and 3. that he be compensated for the difference in rate between a trackman and camp car attendant for all time that he was made to work a trackman position (commencing May 15, 1985 and continuing until he is rightfully put on his camp car attendant position) 4. All overtime worked in this position by a junior employee.'

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

According to the Organization, in March, 1985, the Carrier issued Advertisement #43-UND-0385 advertising numerous positions in the Undercutter Unit, including several trackman's positions. The advertisement stated that the application period would close on March 19, 1985 in accordance with Agreement Rules. The Claimant submitted an application for six (6) of the positions listed on the advertisement. Five (5) of the positions he applied for had a higher rate of pay than a camp car attendant's position. The sixth

position, a trackman's position, had a lower rate of pay than a camp car attendant's position, and therefore, the Claimant ranked the trackman's position as his sixth choice on his application. On April 17, 1985, Carrier assigned the Claimant to his sixth choice; i.e., the trackman's position on the Undercutter unit.

The Organization further states that prior to April 17, 1985, before he ever filled the trackman's position, the Claimant became ill and was unable to work for an extended period. On May 3, 1985, during the time the Claimant was ill, the trackman's position on the Undercutter Unit was abolished, without the Claimant having ever filled the position. On May 15, 1985, the Claimant recovered sufficiently from his illness to return to work and he advised the Carrier of his desire to exercise his seniority as a camp car attendant effective that date. The Carrier refused to allow the Claimant to exercise his seniority as a camp car attendant based on the contention that the Claimant had forfeited his seniority in that class when he was assigned to the lower rated trackman's position on the Undercutter Unit effective April 17, 1985. Notwithstanding the fact that the Claimant had never filled the trackman's position, the Carrier removed the Claimant's name from the Camp Car Attendant's Seniority Roster and required him to work in the lower rated trackman's class beginning May 15, 1985. That is the basis of the instant Claim.

The Organization contends that Paragraph V of Rule 89 specifically states that an employee filling an advertised position in any of the units covered by Rule 89 must, in order to protect his seniority in a particular unit, remain in the unit to which he is assigned during the period the unit is in active operation. In this case, the Organization submits that Claimant held seniority in a unit (camp car attendant) covered by Rule 89 and he did not, at any time, fail to remain in the unit during its active operation. Therefore, it is the Organization's view that Carrier's decision to revoke the Claimant's camp car attendant's seniority and remove his name from that seniority roster was in violation of the Agreement.

Carrier maintains that this is not a matter appropriate for handling under the Unjust Treatment Rule, as it is clearly based on the application of Rule 89. Carrier submits that it properly applied Rule 89 in this instance and thus the Claim should be denied in its entirety.

The contract provision at issue is Rule 89, Paragraph V of which reads:

"V. An employee filling an advertised position in any of the units covered by this Rule must, in order to protect his seniority in such unit, remain in the unit to which assigned during period said unit is in active operation, except:

- (1) An employee working in a Corridor Unit may bid on a vacancy of higher rate in another unit in which he holds seniority, or he may make application for an equal or higher rated position on his home seniority district or in a newly created position of

equal or higher rate in another unit, and if awarded such position, will be permitted to retain his seniority in the unit from which transferred and may exercise seniority therein after he has exhausted seniority in the unit to which transferred. (emphasis added)

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The parties have not referred the Board to any precedent Awards interpreting the application or meaning of the foregoing provision, nor have any prior cases analogous to this one been cited. In addition, there has been no evidence of practice or bargaining history presented to elucidate the disputed contract language. Thus, in order to prevail as the moving party in this case, the Organization had the burden of proving that its interpretation comports with the language itself in accordance with rules or standards used in contract construction.

We find that burden has not been met here. The Organization's only argument was that Claimant protected his seniority as a camp car attendant because he remained in that unit while it was in active operation in accordance with the first sentence of Paragraph V. The difficulty with that argument, however, is that the Organization never persuasively established that Claimant remained in the camp car attendant unit. The evidence before us suggests, to the contrary, that Claimant had been awarded a lower rated position. Although Claimant had not performed service as a trackman due to illness, Rule 89 does not require that an employee perform service in another unit before forfeiting his seniority. In fact the Rule states that the only situations in which an employee can maintain dual seniority are where he has been awarded an equal or higher rated position. In this instance, we must conclude that there is no contractual basis for concluding that Claimant retained his seniority as a camp car attendant upon being awarded the lower rated trackman position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.