

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30447
Docket No. SG-28556
94-3-88-3-379

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

"Claim on behalf of Signal Maintainer R. L. Bennett for all overtime and wages lost account of Carrier violated the current Agreement, as amended, particularly Rule 2-C-1 (a), when it allowed or permitted a temporality disqualified Assistant Inspector to displace him on March 16, 1987. Carrier file SD-2433."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Assistant Inspector J. W. Murphy was given a 30 day suspension (13 days held out of service) and temporarily disqualified in the class of Assistant Inspector and Assistant Foreman. On March 16, 1987, Claimant was displaced from his Signal Maintainer position at Indianapolis, Indiana, by Murphy as a result of Murphy's temporary disciplinary disqualification. SBA 996, Award 25 sustained the Organization's claim on behalf of Murphy concerning the discipline. The question on the merits here is whether Murphy could displace Claimant through the exercise of seniority after Murphy was temporarily disqualified as part of the disciplinary action.

Initially, the Carrier's timeliness argument cannot be considered as it was not raised on the property. Third Division Award 25166 ("It is fundamental that this Board is barred from addressing arguments which have not been raised on the property").

With respect to the merits, the relevant rules state as follows:

"2-B-1. After absence due to leave of absence, jury duty, vacation, sickness, disability, suspension or other cause, an employee must return to his former position, if not abolished or filled by a senior employee in the exercise of seniority, and/or within then (10) calendar days, exercise seniority (including right to promotion) to any position advertised during his absence. An employee failing to obtain a position not requiring a change of residence shall forfeit all seniority. If, during his absence, his regular position has been abolished or filled by a senior employee in the exercise of seniority, he shall exercise seniority in accordance with Rule 2-C-1.

- 2-C-1. (a) Displacement rights may be exercised by an employee:
1. when his position is abolished;
 2. when displaced by a senior employee;
 3. when returning from a leave of absence, sickness, disability, special duty, or suspension and his former position has been abolished or filled by a senior employee in the exercise of seniority; or
 4. when an employee is removed from a position under Rule 2-D-1 and his former position has been abolished or awarded to a senior employee.
 5. when an employee is removed under Rule 3-E-1.

- (b) An employee whose position has been abolished or who has been displaced by a senior employee or who is entitled to exercise seniority under Rule 2-A-4 shall have the right to displace within ten (10) calendar days in any seniority class in which he holds seniority. An employee who fails to exercise seniority to a position not requiring a change of residence shall forfeit all seniority.

An employee exercising seniority must notify the office of the involved Supervisor C&S at least sixteen (16) hours prior to the starting time of the position.

The employee being displaced will not be affected until the end of the tour of duty on the day the displacement occurs.

- (c) Employees unable to exercise seniority to a position not requiring a change in residence and who elect not to exercise seniority requiring a change in residence shall be furloughed.
- (d) Employees furloughed must keep their employing officer advised in writing (with a copy to the Local Chairman) of any change in their current address."

Rule 2-C-1 is very explicit and detailed as to when an employee can exercise displacement rights. A temporary disciplinary disqualification is not one of those specified situations. It is an axiomatic rule of contract construction that the express inclusion of specific conditions is meant to exclude all others. Given the detail and specificity of the circumstances under which displacement rights can be exercised as provided in Rule 2-C-1, it is therefore fair to conclude that a temporary disciplinary disqualification was not intended to be one of those. This Board simply does not have the authority to add a condition to Rule 2-C-1 governing temporary disciplinary disqualifications when the parties have chosen not to do so. Therefore, the Carrier violated the Agreement by allowing Murphy to exercise displacement rights against Claimant as a result of Murphy's temporary disciplinary disqualification.

The Carrier's reference to "suspension or other cause" in Rule 2-B-1 does not change the result. Rule 2-C-1 is the governing provision.

No monetary relief will be allowed, however. The Organization has not demonstrated that Claimant lost wages as a result of the displacement by Murphy.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.