

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30755
Docket No. MS-30351
95-3-92-3-76

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Walter W. Dieken

PARTIES TO DISPUTE: (Burlington Northern Railroad

STATEMENT OF CLAIM: "Why would an employee be forced to sacrifice sixteen (16) years of seniority due to the irresponsibility and misrepresentation of Union Officials?"

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 employee 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 were given due notice of hearing thereon.

The Claimant had established and held seniority as a Foreman and as a Machine Operator in the Track Sub-Department at Hastings, Nebraska. He was regularly assigned as a Machine Operator at the time the events surrounding this dispute began to unfold.

Pursuant to Award Bulletin No. WL-061 dated March 31, 1991 the Claimant was awarded the Assistant Foreman's position on Wood Tie Gang TP60 effective April 8, 1991. Pursuant to that very same Award Bulletin, a junior employee was awarded a Foreman's position at Fairmont, Nebraska, effective April 8, 1991.

On April 26, 1991 six of the Claimant's fellow employees submitted a signed letter of protest to the Organization's Vice Chairman contending that pursuant to Rule 17 Claimant's name should be removed from the Foreman's Seniority Roster due to his having been assigned to a lower rank. On April 30, 1991 the Vice Chairman transmitted the employee protest to the Division General Manager for resolution. Therein the Vice Chairman indicated that the protest "... may have been handled through another protest."

On May 3, 1991 the Division General Manager furnished the protestors a copy of his April 24, 1991 letter addressed to the Claimant advising him that effective that date his Foreman rights in Seniority District 8 were forfeited pursuant to Rule 17, because he failed to protect his Foreman seniority by bidding and being awarded the Assistant Foreman position on Wood Tie Gang TP60 on March 31, 1991 when a Foreman position on the Aurora Mainline Section at Aurora, Nebraska, went no bid on the same set of bids and awards.

Rule 17 reads as follows:

"RULE 17. BIDDING INTO A LOWER SENIORITY RANK

An employee assigned to a position making written application for and becoming assigned to a position in a lower seniority rank on the same seniority roster in which assigned, or mailing written application for and becoming assigned to a position on another seniority roster in other than the highest seniority rank on such seniority roster in which his seniority and qualifications entitle him to work, will forfeit all seniority rights in all higher seniority ranks on the seniority roster in which such an employee takes service."

On June 12, 1991 the Claimant protested the loss of his seniority to the Division General Manager on the basis that he believed a March 31, 1989 Letter of Agreement canceling Rule 8 G of the Agreement protected his seniority in this instance. On September 20, 1991 the Division General Manager denied the appeal on the basis the March 31, 1989 Letter of Agreement made no mention of Rule 17 and had nothing to do with its provisions, which only deal with voluntarily bidding into lower ranks.

On November 12, 1991 the Claimant appealed the matter to the Assistant Vice President, Labor Relations. By letters dated January 2 and 17, 1992 the Carrier denied the appeal on the basis Claimant's fellow employees filed a timely valid protest.

Paragraph G of Rule 8 FORCE REDUCTION, which was canceled, read, in relevant part, as follows when it was in effect:

"G. An employee who on account of force reduction or abolition of positions exercises his seniority on any seniority roster to a position in a rank lower than the highest rank in which he holds seniority on that roster, must, at the first opportunity, take service in the higher ranks in which he holds seniority on that seniority roster when vacancies of more than thirty (30) calendar days' duration occur, or when new positions of more than thirty (30) calendar days' duration are created. An employee who fails to take service in a higher seniority rank, as herein provided for, will forfeit all seniority rights in the seniority rank, and in all higher seniority ranks of the seniority roster in which he fails to so exercise his seniority rights.

NOTE: An employee who has exercised his seniority into a lower seniority rank and who is occupying a temporary vacancy or position of less than thirty (30) calendar days' or less duration in a higher seniority rank, must make application for and accept bulletined positions or vacancies in the higher rank in order to comply with Section G of this rule."

The parties' March 31, 1989 Letter of Agreement reads, in relevant part, as follows:

"2. The provisions of Rule 8 G are canceled as a result of implementing the shorter period for posting bulletins, and are replaced by the following:

(a) If a job in a higher rank goes no bid and there are no qualified employees on furlough under Rule 9, then the junior qualified employee with seniority who is working in a lower rank on the roster on which the bulletined vacancy occurs will be assigned, and he must accept the assignment or forfeit seniority in that rank.

(b) If an employee works in a lower rank or roster than his seniority entitles him to work, for a period of one calendar year due to the operation of the waiver of Rule 8 G, he shall forfeit his seniority in that rank and higher ranks and on such roster. Enforcement of this provision will be based on employee protests. Protests of failure to exercise seniority under this provision must be submitted in writing within 60 calendar days from the date of occurrence of any subsequent opportunity to exercise seniority which the employee has passed up."

The Claimant was not involved with the provisions of former Rule 8 G due to the fact that his job had not been abolished, and he had not been displaced. By electing to work as an Assistant Foreman on Wood Tie Gang TP60 instead of as a Foreman, he triggered the clear and unambiguous self-executing provisions of Rule 17 and forfeited his Foreman seniority. This interpretation is in accordance with the interpretation historically applied by the parties to the Agreement. Third Division Awards 29756 and 28753, on the property, are in support of this.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 1995.