

Award No. 6550
Docket No. MW-6589

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE WESTERN PACIFIC RAILROAD COMPANY**

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

(1) That the Carrier violated the effective agreement when it permitted Water Service Maintainer L. Noble to displace Water Service Foreman L. McGarrah, Gang No. 1, on June 26, 1950;

(2) That Water Service Foreman L. McGarrah be compensated for the net wage loss suffered by him since June 1950, and until such time as he was returned to his former position as Foreman of Water Service Gang No. 1.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 26, 1950, Mr. L. Noble held the position of Water Service Foreman in Water Service Gang No. 1, with headquarters at Partola, until the Carrier abolished all positions comprehended within that gang.

The Carrier subsequently re-established Water Service Gang No. 1, with assigned headquarters being designated as camp and/or boarding cars. Among the positions bulletined in the new Water Service Gang No. 1, was the position of Water Service Foreman, formerly occupied by Mr. Noble.

Mr. Noble declined to bid on this new Water Service Foreman's position in Gang No. 1, but in lieu thereof, he subsequently bid for and was awarded a position as Water Service Maintainer. Mr. L. McGarrah bid on the position of Water Service Foreman in Gang No. 1 and was subsequently awarded the position. The position of Water Service Foreman is of a higher class than that of a Water Service Maintainer.

Under date of June 23, 1950, a notice was issued to a number of employees, including Water Service Maintainer L. Noble, that their positions would be abolished effective at the close of their respective shift on Friday, June 23, 1950. Water Service Foreman L. McGarrah's position was not abolished.

The Carrier notified Water Service Foreman L. McGarrah by wire on June 23, 1950, subsequently confirmed by letter of June 26, 1950, that he would be displaced as Foreman of Water Service Gang No. 1 effective Monday, June 26, 1950 by Water Service Maintainer L. Noble.

By wire of July 7, 1950, Water Service Foreman McGarrah was instructed by the Carrier to protect the Water Service Maintainer's position

As shown in Carrier's Exhibit "A" both Noble and McGarrah held seniority only in the classes of foreman and maintainer, Noble being the senior man in both classes. Neither held seniority as helper, pumper or linerider. Upon abolishment of Noble's position of Water Service Maintainer on June 23, 1950, the only maintainer's position existing was occupied by V. Anderson, who is senior to Noble. There being no vacancy in the class of maintainer, Noble looked to "another" class in which to exercise his seniority rights. Not holding seniority rights in classes lower than maintainer, Noble had no right to displacement in the classes of helper, pumper or linerider. He did hold, however, seniority in "another" class, that of foreman, and the position of Foreman, Gang No. 1, was occupied by a junior man, who Noble displaced in accordance with Rule 9.

It is Carrier's position Noble's displacement in "another" class, when no junior employe was working as maintainer, was proper under Rules 5 and 9. Noble held seniority in the class of foreman, and McGarrah was junior to Noble. Under Rule 9, provided Noble held seniority in the class, he is in no way restricted from displacing in a higher class. The fact that Noble did not bid on the position of Foreman, Gang No. 1, when advertised, in no way restricted his right of displacement. Rule 21 specifically states "employees declining promotion shall not lose their seniority". The Brotherhood has never contended that Noble lost his foreman's seniority when he did not bid on the position at the time McGarrah was assigned to Gang No. 1. Noble merely exercised his seniority in "another" class as provided in Rule 9.

There is no rule in the agreement that supports the claim here presented and Carrier urges it be denied. If the Brotherhood desires the procedure they here contend for, then it should handle in the normal procedure by requesting a change in the Rule. There is no definition of the words "another class" that confines it to "lower class". Another class may include a lower class, but it is not limited or restricted to a lower class as is evidenced by the facts and circumstances in this dispute.

All of above has been presented to the Brotherhood. Unless requested by it.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when carrier permitted Water Service Maintainer Noble to displace Claimant, Water Service Foreman McGarrah, as Foreman on Water Service Gang No. 1, effective June 26, 1950. Prior to June 26, 1950 Mr. Noble was assigned as Foreman of Water Service Gang No. 1, with headquarters at Portola, until carrier abolished all positions of this gang. When Gang No. 1 was re-established the position of Water Service Foreman was bulletined and assigned to Claimant McGarrah. Former Foreman Noble did not bid on this position, but did bid on and was assigned a position of Water Service Maintainer at Winnemucca, Nevada. Water Service Foreman is a higher rated position than that of Water Service Maintainer.

Petitioner contends displacement of Claimant by an employe in a lower class was improper and compensation is requested for time lost. Rule 9 is cited in support of the claim also correspondence which is alleged to show a different interpretation of this rule by carrier than is now taken with reference to the meaning of the rule. Also contending that when an employe voluntarily demotes himself from a Foreman's position, and such position is later abolished, i.e. position taken, he is not entitled to the Foreman's position under the procedure followed in this case by carrier.

Respondent carrier takes the position that Rule 5 and Rule 9 control the situation here presented and proper disposition was made by carrier in this case under the rules cited. That when there was a reduction in force on June 23, it was required to retain the senior man in the sub-department and class capable of doing the work. That this was done and Senior Maintainer V. Anderson was retained; if there had been a Maintainer junior to

Noble in the same sub-department, carrier would have had to retain Maintainer Noble. That the rule is unambiguous and the second provision thereof is dependent on the first provision.

As both parties cite and rely on Rule 9 in support of their respective positions, we set the same out as interpretation of the rule apparently is the controlling factor in applying the facts thereto:

"Rule 9—REDUCING FORCES

When force is reduced, an employe may displace the employe of the same class with the least seniority rights on the seniority district. If there is no vacancy in this class, junior employes so displaced, having seniority rights in another class, may exercise them in the same manner."

Carrier also cites Rule 5 which provides:

"REDUCING FORCES

Except as provided in Rule 22, when forces are reduced the senior man in the sub-department and class on the seniority district capable of doing the work, shall be retained.

Gangs will not be laid off for short periods when proper reduction of expenses can be accomplished by laying off the junior men first. This will not operate against men in the same gang dividing time."

Applying the facts to these rules and in particular to Rule 9, we find there was no junior maintainer left on that seniority district. The only maintainer remaining was senior to Maintainer Noble. Therefore, in considering the second sentence in the rule, set out above, Noble held seniority as a foreman, another class, and in exercising his seniority, thereunder, he used the same to displace McGarrah who was junior to him in that class. Rule 9 permits this to be done.

Under this rule, which is clearly stated, Noble exercised the right given to him and carrier applied the rule correctly in placing him in the disputed position. The Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 claims denied in accordance with Opinion.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1954.