

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when it abolished the position of track inspector held by C. E. Fowler on October 31, 1951, and refused to allow him to displace a junior track inspector;

(2) That C. E. Fowler be permitted to exercise his seniority rights as a Track Inspector;

(3) That C. E. Fowler be allowed the difference between what he was paid and what he should have been paid at the track inspector's rate of pay, beginning with November 7, 1951, and continuing until the violation referred to in Part (1) of this claim is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. E. Fowler was assigned to and held the position of Track Inspector in accordance with the provisions of the effective agreement.

Mr. Fowler was advised by letter dated October 26, 1951, from the Carrier's Chief Engineer, that his position of Track Inspector would be abolished effective at 4:00 P. M., on October 31, 1951.

By letter of November 5, 1951, sent by registered U. S. Mail to the Carrier's Division Engineer, Mr. Fowler, advised of his desire to displace the junior Track Inspector on the Bluford District at 7:00 A. M. on November 7, 1951.

The Division Engineer's Chief Clerk advised Local Chairman P. D. Wheeler, in a telephone conversation on November 6, 1951, that it would not be necessary for Mr. Fowler to report to Bluford to displace a junior Track Inspector as he would not be allowed to displace at that time.

The Carrier's Division Engineer refused Mr. Fowler's request for permission to exercise his seniority in a letter dated November 9, 1951, reading as follows:

or displaced will have the right to exercise their seniority rights as follows:
 . . . (Emphasis added.) The Organization relies on Rule 6 (a) (1) which reads:

"An employe of higher rank than laborer in the Track Department except as provided in paragraph (d) of this rule will have the right to displace the junior employe of the same rank on a regular or permanent position within his seniority district and must exercise his seniority in such rank, otherwise the junior employe of the same rank holding a temporary position, before displacing the junior employe in the next succeeding lower ranks."

This rule provides a displaced employe will have the right to displace a junior employe of the same rank and must exercise his seniority in such rank, etc. If in a particular rank, such as Track Inspector, employes filling the positions have no seniority as such, then they have no relative standing and there is no basis for distinguishing a junior Track Inspector from a senior Track Inspector. Furthermore, having no seniority, they cannot exercise seniority in such rank. Therefore a Track Inspector who is displaced by abolishment of his position, having no seniority rights as a Track Inspector, can exercise displacement rights only in the classifications in which he does hold seniority.

Claimant Fowler was promoted to Track Inspector from the classification of section laborer. When his position of Track Inspector was abolished, he was permitted to exercise his seniority only in the rank in which he held seniority, i. e., in the rank of laborer.

In summary, it is the contention of the Carrier that:

1. Rule 4 provides that seniority will be acquired only on a bulletined position.
2. Classification of Track Inspector established by Memorandum of Agreement of January 5, 1945, is not a bulletined position but is appointive.
3. There is no provision in the agreement of January 5, 1945, which changes the provisions of Rule 4 in order to provide seniority rights in the non-bulletined position of Track Inspector.
4. Rule 6 permits displacement only in the ranks in which employes hold seniority.
5. Since Track Inspectors acquire no seniority as Track Inspectors, in event of displacement they can exercise seniority rights only in lower ranks in which they hold seniority.
6. Claimant Fowler was accorded his rights under the agreement, and there has been no violation of the agreement.

The claim should accordingly be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: The facts, rules of the Agreement in support of the respective positions taken by the parties and citation of awards are set out in full in the record, therefore, we will not review the same in this Opinion.

We are of the opinion that the question for consideration here is as follows:

When a special class was set up by agreement, that is, the appointing of employees of Maintenance of Way to the special position of Track Inspector, did the same create seniority rights which are to be considered as being within the purview of general seniority rights as provided for in the effective Agreement? We think not and for the following reasons:

The right to appoint to such positions without regard for seniority, given to Carrier would be meaningless if such were true, therefore, Carrier is within rights given thereby in the method followed here. An affirmative award under facts presented would be to create a seniority provision with respect to these positions when none was intended. During the time the complained of practice has been in effect no seniority roster has been created and these jobs are not bulletined as provided for in the Agreement, relative to non-appointive positions. Claims should be denied.

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

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 claims are 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 27th day of April, 1954.