

Award No. 13728

Docket No. MW-13670

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, on December 12, 1960, it furloughed Section Laborer F. J. Cox and retained a junior section laborer in service.

(2) Claimant F. J. Cox now be reimbursed for the exact amount of monetary loss suffered account of the aforementioned violation.

EMPLOYEES' STATEMENT OF FACTS: Claimant F. J. Cox's seniority as a section laborer dates from May 1, 1950, while J. E. Sparks holds seniority as a section laborer dating from August 12, 1951. Both of the aforementioned employees hold their seniority on and were assigned to the section at Bloomington, Indiana.

On December 12, 1960, forces on this section were reduced. The Carrier effected such force reduction by furloughing Claimant Cox while, at the same time, retaining junior laborer Sparks.

The excuse given by the Carrier for this violation was the same excuse it gave for the violation covered by the claim which was adjudicated by this Division's Award No. 583.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The precisely same question at issue in the instant dispute has heretofore been submitted to this very same Division of the National Railroad Adjustment Board for adjudication by the same two parties to the instant dispute (Docket MW-675) and this Division, without the assistance of a referee, there held in Award 583 as follows:

The scope rule here, just as in the above case, does not list the position of motor car operator, and, here too, an employe does not have the right to displace on a motor car operator's position by virtue of seniority alone — he must, as has been shown, possess the necessary qualifications.

There has been no violation of the agreement and the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Section Laborer, holds seniority as of May 1, 1950. J. E. Sparks, Section Laborer, seniority dates from August 12, 1951. Both men hold their seniority and assignments on the section at Bloomington, Indiana. Carrier on December 12, 1960, reduced forces, retaining the junior laborer Sparks and furloughed the Claimant.

The Organization contends that the Claimant should have been retained in service as the senior employe under Rule 1 and 6 of the Agreement.

Carrier asserts that Claimant was unqualified to operate a motor car and that the Carrier has a right to determine job content and qualifications, thereby retained a qualified junior employe.

A prior dispute between these same parties, under the same contract, and upon the same question, here at issue, was adjudicated by this Board in Award 583, which sustained the Employee's Position.

We do not find that Award 583 is palpably in error, therefore, we find that Award 583 is controlling in the instant dispute.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1965.