



Award Number 17945

Docket Number MW-18374

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

- (1) The Carrier violated the Agreement when it compelled Motor Car Operator C. M. Rutland to leave his regularly assigned position as motor car operator and to assume a permanent position of District Gang Foreman. (System file E-311).
- (2) Motor Car Operator C. M. Rutland be returned to his regular assigned motor car operator's position.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. M. Rutland holds seniority within several of the seniority ranks within the track sub-department, including Ranks 1 and 5. Subsequent to establishing Rank 1 seniority, he bid for and was assigned to the permanent position of Motor Car Operator (Seniority Rank 5) with Track Supervisor V. A. McLendon, which position he held at the time this violation took place.

The position of foreman on District Gang No. 14 became vacant when Mr. Tonie Connell, Jr. was the successful applicant for another position. The vacancy thus created was advertised within Circular No. 4066, a copy of which is attached hereto as Employees Exhibit "A. Upon receiving no applications for the advertised position, the Carrier filled same by unilaterally assigning the claimant thereto.

a The Employees contend that the claimant's seniority rights were violated when he was required to leave the position to which he had been regularly and permanently assigned for the purpose of filling the vacancy in the position of foreman.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Fact.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: Mr. C. M. Rutland, claimant, is employed on carrier's Birmingham Division. He has seniority as motor

car operator, Rank 5, from July 13, 1950, and seniority as a Foreman, Rank 1, from September 8, 1954.

On June 27, 1968, the foreman's position in District Gang No. 14 at Boyles, Alabama, was vacant, and the Division Engineer bulletined the job. No bids were received, so Mr. C. M. Rutland, the senior qualified Rank 1 employe, whose services were needed as a foreman, was assigned to the position. At the time he was working as a motor car operator, Rank 5.

Employes alleged that since Mr. Rutland had not bid on the position, he should not have been assigned and filed claim, Carrier's Exhibit "A", stating that Mr. Rutland should be returned to the position of motor car operator. It was the position of carrier that Mr. Rutland's services were needed, and that he had been properly assigned as foreman. The claim was, therefore, declined. Correspondence exchanged in connection with the claim is shown by the attached Exhibits "BB" through "HH".

There is on file with the Third Division a copy of the current working rules agreement, and it, by reference, is made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant, a regularly assigned Motor Car Operator, held seniority within several of the seniority districts of the Track sub-department, including ranks 1 and 5 respectively. Carrier was unsuccessful in obtaining a bidder for the position of Extra Gang Foreman, and assigned the Claimant, who held seniority as a foreman, to the unfilled position. Claimant evidently was perfectly satisfied with his own position, which he acquired by bid, and to which he was permanently assigned. He requests no compensation from this Board, but simply requests that he be restored to his regular assigned Motor Car Operator's position.

Carrier in support of its action, relies upon Rule 22(d)(1) which reads:

"RETURN AFTER FORCE REDUCTION

"22(d)(1) Except as provided in the foregoing paragraph (c), in calling men above the rank of laborer for temporary or extra work, the senior cut-off employe in the rank concerned will be given an opportunity to take the extra work when it is expected to be for less than five working days and may be required to take the extra work. When the senior man is not required to take the extra work, the next senior man will be given an opportunity. All vacancies known to be of 5 working days or more, or a vacancy that starts out on an indefinite basis and lasts 5 working days will be offered to the senior man in the rank concerned, regardless of whether he is cut off or serving in a lower rank. It is optional with the division officials as to whether they will require the senior man to take the work. The foregoing will also apply to bridge and building laborers, except that Rule 54(a)(2) will govern when an employe temporarily out of the service because of force reduction has made written application for temporary work as Bridge and building laborer.

In examining the language of the above quoted rule, we are inclined to agree with the Organization to the effect that this rule is not applicable

to the factual situation with which we are confronted. Claimant was not the senior cut-off employee; the work involved was not extra work, but was work which constituted a permanent assignment as such. To contend that Claimant, as Carrier does, must either accept the Foreman position or forfeit his seniority is not supported by Rule 22(d)(1). Carrier is attempting to place a strained construction on the language of the Rule with which we cannot agree. Hence we conclude that the unilateral action of Carrier was not justified nor was it in consonance with the terms of the Agreement. We will sustain the claim.

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

That the parties waived oral hearing;

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970