

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20291
Docket Number MW-20441

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri-Kansas-Texas Railroad Company

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

(1) The Carrier violated Rule 1 of Article 3, and Rule 1 of Article 5 of the current Agreement by not assigning Mr. Richard Ulum to the position of B&B Lead Mechanic; position advertised in Circular No. 155 (System File 300-42/2579).

(2) That Mr. Richard Ulum now be allowed the difference in what he received as B&B Mechanic and what he should have received as B&B Lead Mechanic.

OPINION OF BOARD: In August, 1972, Carrier advertised a position of B&B Lead Mechanic in Seniority District No. 4.

Claimant (Richard Ulum) holds seniority as a B&B Mechanic as of November 9, 1970 in District No. 4. Jerry Ulum holds seniority as a B&B Mechanic as of March 1, 1971. Neither employee held any seniority as a B&B Lead Mechanic at the time.

Both employees submitted applications for the Lead Mechanic position. Carrier assigned Jerry Ulum to the position.

The Organization protests the assignment, citing the following Rules:

"ARTICLE 3.

Rule 1. Seniority begins at time employee's pay starts in the respective branch or class of service in which employed, transferred or promoted and when regularly assigned. Employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules.

ARTICLE 5.

Rule 1. All positions except those of Track Laborers will be bulletined.

Promotions shall be based on ability and seniority; ability being sufficient seniority shall govern."

The Organization asserts that the relative seniority of the two employees as B&B Mechanics should control promotion to Lead Mechanic.

Carrier points out that Article 3, Rule 14 designates separate seniority for certain employee groups and that Lead Mechanic seniority and B&B Mechanic seniority is not interchangeable. Having so noted, Carrier points out that seniority in one class does not control promotions to positions in other classes.

The same basic question concerning these same parties has been considered on a number of prior occasions. The Organization states, in its Ex Parte Submission, that denial Award 11587 is of no precedential value because it dealt with a rule which has since been amended. In addition, it asserts that Award No. 19 of Public Law Board No. 76 is distinguishable on factual grounds and is not of precedent value because it failed to recognize essential differences in issues, rules and facts when it followed Award 11587.

In its Reply to Carrier's Submission, the Organization distinguishes Award 19707.

While we are not prepared to dismiss the above cited Awards out-of-hand, and hold that they do not speak to the essential question before us, even assuming that they are not directly pertinent to this issue, we are confronted by even more recent Awards involving these same parties. Award 20062 sustained a claim based on certain contractual language of preference of groups of employees in a named order. But, the same Referee, in subsequent Award 20085 considered a situation much more analogous to the instant dispute, and denied the claim, citing as authority, Award 11587.

Most recently, Award 20206 reached the same conclusion.

We have thoroughly reviewed all of the pertinent Awards between these parties concerning the basic issue presented here, both individually, and as they relate one to another. We feel that those Awards have consistently disposed of the dispute against the Organization for reasons highly pertinent here and with reference to the same basic contractual provisions presented for our consideration.

In this type of situation, it is of little moment that reasonable minds may have differed in an original application of the Rules. In the final analysis, the interests of labor-management stability are best served by a basic predictability of Awards.

After a thorough review of the above cited Awards, the Board is of the view that they speak to the issue and that no compelling consideration has been advanced which requires or necessitates reversal.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.