

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22922
Docket Number MW-22898

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The Agreement was violated when the Carrier laid off senior Machine Operator D. M. Grinde instead of junior Machine Operator T. L. Caviness from 5th of December through 9th of December, 1977 (System File D-2-78/MW-11-78).

(2) Claimant Grinde now be compensated equal to what was earned by Machine Operator Caviness account of referred to violation."

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement between the parties when it laid off senior Machine Operator D. M. Grinde instead of junior Machine Operator T. L. Caviness from the 5th through the 9th of December, 1977. Carrier, on the other hand, denies that it violated the Agreement.

Both Grinde and Caviness were furloughed at the close of work on December 2, 1977. On Monday morning, December 5, 1977, Carrier was notified by regularly assigned Work Equipment Operator, S. A. Crespin, that he would be unable to work on December 5, 1977. Crespin was assigned to operate a machine known as Tamper-PT 24, located in Denver, Colorado.

Carrier filled this vacancy by calling in Machine Operator Caviness who lives in the Denver area. Caviness worked Crespin's position from December 5-9, 1977. Carrier argues that it acted in accordance with Rule 11(g)1 when it called Caviness as he was the senior employe at the location.

It is uncontested that the vacancy created was a temporary vacancy of less than thirty (30) calendar days duration. As such, Rule 11(g) is the applicable work rule. A resolution of this matter, therefore, requires an interpretation of Rule 11(g). In relevant part, Rule 11(g) states:

RULE 11--ASSIGNMENT OF NEW
POSITIONS--VACANCIES

* * *

Temporary Assignment--(g). New positions and vacancies undergoing bulletining and assignment and temporary vacancies of less than thirty (30) calendar days' duration that are to be filled shall be filled in the following order:

1. By the senior employee working in the gang or at the location who holds seniority in the class of the position to be protected who through force reduction is working in a lower class or furloughed account force reduction.
2. By the senior employee working in the gang or at the location who has qualified for promotion in accordance with the provisions of Rule 9.
3. To the senior unassigned employee of the class on the seniority district who is working in a lower class or furloughed account force reduction.
4. To the senior employee awaiting promotion who has qualified in accordance with the provisions of Rule 9.
5. By promotion of the senior employee in the succeeding lower class or classes in the subdepartment who has applied for promotion in accordance with the provision of Rule 9 but who has not been qualified for or held an assignment in such class.

Rule 11(g) sets forth the procedure, in numerical order for filling temporary vacancies. Rule 11(g)1 requires that the vacancy first be filled by an "employee working in the gang or at the location who holds seniority in the class ... to be protected."

Carrier's reliance on Rule 11(g)1 is incorrect. Rule 11(g)1 is operative when an employee is either working in the gang or working at the location. Neither Grinde nor Caviness were working at the time the vacancy arose. Both were furloughed. Thus, Rule 11(g)1 is simply not applicable.

Similarly, Rule 11(g)2 is not apposite. It is also predicated on an employee working in the gang or working at the location. Moreover,

Rule 11(g)2 addresses the situation of an employee who has qualified for a promotion. This has nothing to do with the facts here.

Since 11(g)1 and 11(g)2 are not appropriate for determining which of the two employees should have been offered the temporary vacancy, under the numerical procedure of Rule 11(g), 11(g)3 must be resorted to. It requires that the vacancy go to the "senior unassigned employee of the class on the seniority district who is working in a lower class or furloughed account force reduction." (Emphasis added).

Rule 11(g)3 is clear and unambiguous. Its import is unmistakable. The senior unassigned employee of the class who was furloughed account of force reduction is to be offered the vacancy. The distance from the vacancy is not a relevant factor.

Here, as between Grinde and Caviness, Grinde is the senior unassigned employee who was furloughed account of work reduction. As such, Grinde, under the plain meaning of Rule 11(g)3, should have been offered the vacancy. See Third Division Award 1862. When Carrier failed to offer Grinde the temporary vacancy, it violated the Agreement.

The final question that remains is the appropriate remedy. Given the lateness of Crespin's call on December 5, 1977, it was not unreasonable for Carrier to have determined that Claimant, who resided 277 miles away in Grand Junction, Colorado could not possibly have reported promptly on December 5th. For this reason, we are convinced that Carrier did not violate the Agreement when it called the closer man for that day only. It had the right to assure that the position was filled. Therefore, we will sustain the claim for December 6-9, 1977, but not for December 5th. See Third Division Awards 2391, 2690.

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

Award Number 22922
Docket Number MW-22898

Page 4

That the Agreement was violated.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.

