

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brian G. Brooks
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"The Carrier violated the Agreement when on January 14, 1988, it allowed Orville McKinney, a displaced laborer, to fill an operator's vacancy on Central Region Force 6G20 instead of allowing myself, Brian Brooks, a displaced operator, who requested to fill said vacancy.

I, Brian Brooks, claim eight (8) hours of pay at an equipment operator's rate of pay for the fifteen (15) days of regularly scheduled work for Force 6G20 until I was awarded a permanent operator's job on Force 6G03 on February 5, 1988." (System File C-TC-4316)

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows: Claimant was displaced as an operator from Seth, West Virginia on Force 6G48 on November 2, 1987. He filed a recall notice protecting extra work consistent with the applicable provisions of the controlling Agreement. On January 13, 1988, he requested and received permission to fill the operator's position on Central Region Force 6G20. He worked one day, January 14, 1988, and was displaced by another employee. This position was created as a result of a position being abolished and restored within thirty days, with the operator originally assigned to that position electing not to return. The position was advertised for bids on January 5, 1988, to be awarded January 23, 1988. On January 14, 1988, Claimant and the other employee reported for the position, but the other employee was awarded the vacancy. At the time the other employee was employed as a trackman and Claimant was in furlough status.

It was Claimant's position that Carrier violated Agreement Rule 2 since the other employee had displaced from a laborer's position on Force 6G35 and thus was effectively precluded from an upward displacement. He pointed out that the other employee had worked several weeks as a laborer before being displaced by a senior laborer and, as such, pursuant to Rule 2(1) was required to displace a junior employee or file notice to become a cut off employee within ten (10) days. He also argued that employees displacing in a lower class do not forfeit this seniority in a higher class, but they can return to the higher class and exercise seniority only after bidding back into the higher class. He cited Third Division Award 25700 as on point with this dispute.

Carrier maintains that the other employee held greater seniority as a Machine Operator and was entitled to the vacancy. It asserts that his assignment was not a bump-up, as contemplated in Rule 2 or the Interpretation to said rule. It recognizes that the employee had exercised seniority from a Machine Operator's position to a laborer's position, but argues that the other employee is not barred from thereafter displacing to a higher position. On this point, it disputes Claimant's position, that the only way the other employee could re-enter the higher class was via bid-up. It contends that had it accorded preference to Claimant, who was junior in seniority to the other employee, it would have posed a restriction on the other employee, which is not sanctioned in the Agreement.


In considering this case, we concur with Carrier's position. Firstly, there is no evidence that the other employee forfeited his seniority when he displaced to a lower position. Secondly, there is no Agreement requirement that the other employee was required to exercise seniority downward in the laborer's class. Thirdly, there is no provision requiring Carrier to give preference to an employee in furlough status over a senior employee protecting his seniority rights in a lower class as a result of force reduction. The other employee properly claimed an advertised new position in accordance with Paragraph c of Rule 5 and said position awarding was not a bump-up as contemplated by Interpretation 1 of Rule 2(h). Third Division Award 25700 referenced by Claimant as controlling herein is misplaced, since the instant dispute relates to a bulletined position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.