

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31398
Docket No. MW-30935
96-3-92-3-804

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company (former
(Fort Worth and Denver Railway Company)

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

- (1) The Agreement was violated when the Carrier improperly removed Mr. D. G. Taylor's name from the applicable 1991 Welder Seniority Roster. (System File F-91-42/9MWD 91-12-27C FWD)
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall reinstate Mr. D. G. Taylor's seniority on the applicable Welder Seniority Roster and he shall be compensated for all wage loss suffered."

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 employee 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.

Claim before the Board centers upon the issue of whether Carrier violated the Agreement when it removed Claimant's name from the Welder's Seniority Roster. The claim focuses upon the following Rules language:

"Rule 7 - ESTABLISHMENT OF SENIORITY

When Established (a): Seniority of new employees entering the service shall begin at the time the employee's pay starts. In promotions, seniority shall date from the time an employee is assigned by bulletin to a position in the seniority class on the seniority district to which assigned except that:

... 2. An employee promoted to a bulletined position who fails to qualify thereon within thirty (30) days as provided in subsection (f) of Rule 10, will not acquire a seniority rate (sic date) as a result of filling such position.

Rule 10 - PROMOTION

Employees Failing Examination (f): An employee who fails to pass the examination shall be advised promptly in writing with copy to the General Chairman as to the cause or causes of his failure to qualify. Such employee shall be privileged to again make application for promotion to said class after an expiration of ninety (90) days."

The Organization alleges Carrier violation of Rule 7 in that the Claimant was awarded a Welder's position. Thereafter, the Claimant was listed on the September, 1991 Seniority Roster as a Welder with seniority date of February 28, 1991. The Organization argues throughout its on-property correspondence that the Carrier violated Rule 7 by removing the Claimant's seniority. The facts indicate that the Claimant was advised in October that his seniority was being removed due to a bump.

The Carrier bases its actions upon the surrounding facts and the application of Rule 10. The Claimant never worked the assigned position as he was bumped prior to reporting for the Welder's position. The Carrier therefore holds that his assignment "became a nullity." Additionally, the Carrier argues that as the Claimant never actually took over the position, he never qualified for the seniority.

As a preliminary point, this Board finds no record on property with respect to arguments over past practice or roster delays. The Board will only decide issues discussed while the dispute was argued on the property.

Considering the case on merits, Rule 7 has clear language. The Rule states that "In promotions, seniority shall date from the time an employee is assigned by bulletin..." It carries the exception under Rule 10(f) on qualifying. Rule 10(f) refers to failing to pass examinations, which does not pertain to these circumstances. There is no evidence of an examination, nor is there any evidence that Claimant or the General Chairman was advised in writing of such failure.

In these instant circumstances, the Board finds the Carrier's arguments unpersuasive. The Claimant was assigned the Welder's position and under this Rule, when he was promoted thereby from Assistant Welder to Welder, his seniority was properly the date of bulletin assignment. The probative evidence is that the Carrier properly assigned him his seniority date and then removed it. The fact that Claimant did not occupy the position prior to bump does not nullify the language. Carrier's reliance on other Awards is not on point as they involve other circumstances and Rule language (Third Division Award 10621 and Public Law Board No. 1210, Award 8).

This Board has always held that the parties must negotiate language and that we must not interpret new meanings into clear language. The claim herein is of a promotion with no probative evidence of qualification examination or practice. The language clearly establishes seniority in these circumstances "... from the time an employee is assigned by bulletin to a position...." with the only exception the employee's failure to "pass the examination." The Board finds no other exception or language requiring the employee to work the position for any length of time and we will not write one by this decision. We are constrained by this record and Rules to sustain the claim.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.