

PUBLIC LAW BOARD NO. 2960

AWARD NO. 103  
CASE NO. 139

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes  
and  
Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not allow Foreman C. R. Gatewood to displace junior Foreman W. L. Cory on the Central Division Rail Gang. (Organization File 2T-4382; Carrier File 81-84-77)
- (2) Claimant C. R. Gatewood shall be compensated for the differential as between an assistant foreman and foreman's rate of pay and compensated for all overtime worked by Foreman W. L. Cory.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. The Claimant was employed as a track foreman with a seniority date of May 5, 1980. The Claimant's foreman position was abolished, and on December 1,

1983, and subsequently, he attempted to displace junior Foreman Cory on the Central Division Rail Gang. Foreman Cory's seniority date is June 20, 1980. He was occupying a "Class A" foreman position. The Carrier denied the Claimant the right to displace Foreman Cory.

The claim protests the Carrier's denial of displacement rights to the Claimant. The Organization contends that this violates the Agreement, specifically Rule 13, which they believe is controlling. Rule 13 states:

"Employees whose positions have been abolished or who have been displaced will have the right to displace employees with less seniority providing they do so within ten (10) working days of the date their position was abolished or they were displaced. An employee who is absent on vacation or leave of absence when his job is abolished or he is displaced will have the same rights to displace, provided such rights are exercised within ten (10) calendar days of his return to active service. Junior employees cannot be displaced during course of day's work."

They argue that Rule 13 is clear and unambiguous and gives the senior employee the right to displace a junior employee when their position is abolished.

The Carrier contends that Article II, Section 3 of the "Coal Line Agreement" is applicable. It reads as follows:

"All positions of foremen on gangs consisting of 18 or more employees will be bulletined to employees on the appropriate seniority district pursuant to the procedures of Rule 16, but such positions will be filled on the basis of qualification and seniority, qualification to be a first consideration."

They argue that the purpose of Article II, Section 3 was to give the Carrier the authority to fill such positions with the best qualified employees. Seniority is given consideration only in the event that two applicants have equal qualifications.

There is substantial persuasive appeal to both parties positions. However, one consideration rises above all others. This is the basic intent of Article II, Section 3. The intent is clearly to give the Carrier significant discretion in determining who will be the foreman on gangs of 18 employes or more. When seniority is a consideration, it is subordinate to qualifications. Unless qualifications were equal, seniority would not be a controlling factor. To this end, the parties in Section 3 stated that Class A foreman position would be filled when bulletined on this basis.

When the basic purpose of Article II, Section 3 is considered, it is the Board's opinion that its intent overrides the normal displacement rights granted in Rule 13. If the Board were to hold that in this situation Rule 13 controlled, the more specific language of Article II, Section 3, would be negated, and in effect, nullified.

This is easily seen by way of an example. Two foremen could bid for a Class A position. The Carrier could, as clearly stated in Article II, Section 3, choose the junior of the two, if they are more qualified. The senior employe could later have his position abolished and seek to displace the junior employe from the Class A position. If he were allowed to bump the junior employe, the Carrier's initial right to assign the junior employe to the Class A position would be circumvented and negated.

Thus, it is most reasonable to interpret Article II, Section 3, as a limited exception of not only Rule 17, which generally governs the filling of positions, but also Rule 13, which gene-

rally governs displacements. To do otherwise, would make a nullity of Article II, Section 3. Such interpretation should be avoided.

AWARD:

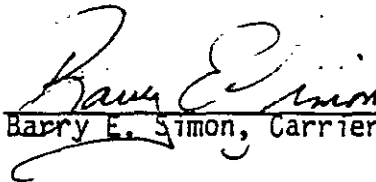
The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated:

Sept 10, 1985