

PUBLIC LAW BOARD NUMBER 3530

Award Number: 51
Case Number: 51

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

R. L. Prince, Rt. 1, Box 13, Crum, WV 25669, has filed claim for not being allowed to make displacement on Truck Crane Helper's job. Employees request pay at applicable straight time rate from October 28, 1982 until violation is corrected.

FINDINGS:

On September 28, 1982, Claimant attempted to exercise seniority by displacing as a Helper on Truck Crane No. 10122. Carrier disallowed the displacement on the grounds that no position existed. Claimant subsequently displaced onto another position. The Organization filed claim on behalf of Claimant seeking compensation on the grounds that Claimant was wrongly denied opportunity to displace on the Helper's job.

The issue to be decided in this dispute is whether Carrier violated the Agreement by denying Claimant the opportunity to exercise seniority displacement rights on the Truck Crane

Helper's job.

The Organization's position is that Carrier violated Rules 1, 2 and 61 of the Agreement by refusing Claimant's attempt at displacement. The Organization contends that Rule 1, the Scope Rule, and Rule 2, outlining Seniority Groups, establish Claimant's right to displace on the Helper's job as per his seniority rights. The Organization alleges that the Helper's position is contained in Class 3, Grade 1 of Group 2-A, and that the parties understood that such classification indicated that Claimant's seniority position would be utilized to fill assignments.

The Organization maintains that Claimant was entitled under the Agreement to exercise his seniority and displace on the position in question.

The Carrier's position is that no violation of the Agreement occurred when it denied Claimant the right to displace on the Helper's position. Carrier maintains that the position Claimant attempted to displace on was abolished and therefore unavailable for any employee, regardless of seniority. Carrier further maintains that nothing in the Agreement grants exclusivity of the work performed by Helpers to any employee group.

Carrier additionally argues that Claimant was not adversely affected by the denial. Carrier alleges that Claimant displaced on higher paying positions after being denied the Helper's job. Therefore, Carrier maintains there is no basis for any damage claim in this case. Carrier cites awards to substantiate the position that monetary damages must be proven to sustain a claim.

Carrier argues that it was justified in abolishing the position in question. Carrier alleges that the position was no longer necessary for its operations, and that it therefore used managerial prerogative to abolish the position. Carrier maintains that the Agreement does not restrict it from eliminating positions that have become obsolete or inefficient, and cites several awards supporting the exercise of management rights to abolish positions. The Carrier contends that only exclusivity of work may prohibit such an abolishment, and that such exclusivity has not been established either by the Agreement or evidence of past practice.

Finally, Carrier submits that Award No. 5 of this Board resolved the basic issue at hand in Carrier's favor, and that

the award should, under the principle of res judicata, be followed in the present case.

After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed to sustain its burden of proof with regard to the claim at hand. Since Carrier has established that the position in question was abolished, the only issue remaining is whether that abolishment was prohibited by the Agreement. We find that it was not.

Rules 1 and 2 of the Agreement nowhere prohibit Carrier from abolishing a position it deems unnecessary or inefficient. Arguably, a showing of exclusivity of performance of the abolished duties would entitle a claimant to relief, assuming that those duties were subsequently performed by other employees. However, the Organization has wholly failed to establish exclusivity by past practice, and we do not find language in Rule 2 granting such exclusivity.

Furthermore, we agree with Carrier that the Claim is invalid for lack of any monetary damages. Since Carrier's unrefuted allegation indicates that Claimant procured higher

paying positions subsequent to the denial, we do not see any harm suffered as a result of the alleged violation. Absent such harm there is, in essence, no basis for the claim.

AWARD

Claim denied.

Nicholas Rymar
Neutral Member

J. A. Abbatello, Jr.
Carrier Member

Bryce L. Ball
Organization Member

Date: 1-21-87