

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 19
and)
) Award No. 13
NORTHEAST ILLINOIS REGIONAL COMMUTER)
RAILROAD CORPORATION)
)

Hearing Date: January 7, 2009

- (1) The Agreement was violated when the Carrier assigned junior employees M. Williams and/or C. Escutia to work an unassigned mechanics position from January 10 through 15, 2002, instead of assigning senior Mechanic J. Jefferson (System File C-02-02-C060-02-M/08-31-442)
- (2) As a consequence of the violation referred to in Part (1) above, Mechanic J. Jefferson shall now be allowed thirty-two (32) hours at his respective straight time rate of pay.

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimant established seniority as a Mechanic on April 20, 1994. During 2001, Claimant failed the Mechanic's rule examination three times. Consequently, he was not qualified to work as a Mechanic and was working as an Assistant Mechanic when, on January 4, 2002, his position was eliminated. There were no Assistant Mechanic positions available into which Claimant could displace. There were several Mechanics working who had less seniority than Claimant but Claimant could not displace them as of January 4, 2002, because he was not qualified as a

Mechanic.

Meanwhile, two temporary Mechanic positions became available which Carrier filled on January 7, 2002, with qualified Mechanics who had less seniority than Claimant. On January 9, 2002, Claimant took and passed the Mechanics rules examination and became qualified to work as a Mechanic. Claimant then sought to displace one of the Mechanics in the temporary positions and was denied. The instant claim challenges the denial.

At issue here is the interplay of Rules 6(d), 9(d) and 9(f). Rule 6(d) provides:

Positions or vacancies of thirty (30) or less calendar days will be considered temporary and may be filled without bulletining, with preference given to the senior employees in the rank and group in which the position or vacancy occurs who may be out of work or working in a lower rank due to force reductions. If no such employee is available, the position or vacancy will be filled through the general promotion rules.

Rule 9(d) provides, in relevant part:

An employee affected by a force reduction or abolishment of a gang, shall, within a period of ten (10) calendar days from the date of his displacement, exercise his seniority rights over any junior employee. . . .

Rule 9(f) provides:

Employees temporarily out of the service or serving in lower ranks will be given the opportunity to return to the service or to such higher rank in the service in which they have established seniority, in the order of their seniority, to fill temporary vacancies or positions.

The Organization contends that Claimant had ten calendar days from the date his position was abolished, i.e. ten days from January 4, 2002, to exercise his seniority rights. When Claimant became qualified as a Mechanic on January 9, according to the Organization, he still had three more days in which to exercise seniority into a Mechanic's position. We agree. The Organization's interpretation is in keeping with the plain meaning of Rule 9(d).

However, we also agree with Carrier that when Carrier filled the temporary vacancies on January 7 with employees who were junior to Claimant, it did not violate the Agreement. At that time, Claimant was not qualified to fill either temporary vacancy because he had yet to pass the Mechanic's rules examination. Neither Rule 6(d) nor Rule 9(f) requires Carrier to fill a vacancy with an employee who is not qualified.

As issue then is whether Claimant had a right under the Agreement to displace one of the Mechanics from the temporary position after he became qualified on January 9. The Organization urges that Rule 9(d) gave Claimant the right to exercise seniority

over any junior employee.” Because the Mechanics occupying the temporary assignments were junior to Claimant, the Organization contends, under the plain language of Rule 9(d), Claimant had a right to displace them.

If Rule 9(d) stood alone, we would be inclined to agree with the Organization. However, Rule 6(d) provides for filling temporary vacancies with employees who are out of work due to force reductions. An employee who may displace into a permanent position and fails to do so arguably is not out of work due to a force reduction, but is out of work due to his own failure to exercise his seniority rights.

When read together, Rules 9(d) and 6(d) are ambiguous. They may mean, as the Organization contends, that an employee may displace a junior employee working in a temporary position even though the employee could also displace into a permanent position because Rule 9(d) allows the employee to displace any junior employee. However, it may also mean, in light of Rule 6(d) that an employee may not displace a junior employee from a temporary position as long as the employee is able to displace a junior employee from a permanent position because, with the ability to bump into a permanent position, the employee cannot be said to be out of work due to a force reduction.

The practice on the property has been to not allow employees to displace junior employees from temporary positions as long as the employee is able to displace into a permanent position. In light of the ambiguity that arises when Rules 6(d) and 9(d) are read together, we defer to the practice on the property as the best indication of the intent of the parties. Accordingly, we conclude that Claimant, when he became qualified on January 9, 2002, did not have a right to displace into either temporary position because he could have displaced a junior Mechanic from a permanent position. However, our review of the record reveals that there was considerable confusion as to how and whom Claimant could displace once he passed his Mechanic’s rule exam. In light of that confusion, we shall award Claimant two days’ pay at the applicable straight-time rate.

AWARD

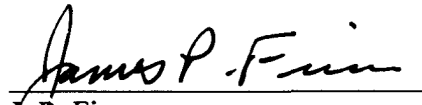
Claim sustained in accordance with the Findings.

ORDER

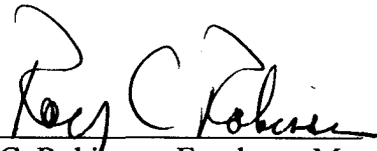
The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto



Martin H. Malin, Chairman



J. P. Finn
Carrier Member



R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, March 31, 2009