Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11045
Docket No. 10830
2-C&NW-CM-'86

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carman D. Lukehart was denied his right to exercise his seniority for Job 035 on July 21, 1983, when the Carrier permitted Carman John Corio, Jr., to be awarded Job 035 without exercising his seniority after due notice that his job, No. 203 was abolished, and was permitted to work Job 035 July 25, 26, 27, 28, and 29, 1983.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman D. Lukehart in the amount of eight (8) hours pay for July 25, 26, 27, 28 and 29, 1983, account of being denied his right to exercise his seniority and be awarded Job No. 035, amounting to $103.60 for each day claimed, with a total of $518.00.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 Carrier posted Bulletin No. 5 on July 18, 1983, announcing the abolishment of five Job Numbers (203, 022, 026, 202 and 207) effective July 22, 1983. Both Claimant and Carman John Corio were affected. On July 21, 1983, Claimant gave notice to bump seven Jobs (003, 001, 017, 018, 035, 208 and 209) in order as his seniority would hold. On July 25, 1983, Corio was assigned to Job 035. Corio worked Job 035 for five days until he, in turn, was

bumped by another Carman on July 29, 1983. Claimant's seniority date was July 13, 1977. Corio's seniority date was August 6, 1975.

The Organization claims a violation of Rule 25 since although Corio had greater seniority than Claimant, Corio did not exercise his senority by placing himself on the job within five days. The Organization claims that Corio exercised his seniority on July 28, 1983, and placed himself on Job 035 with a back date to July 25, 1983.

The Carrier maintains that Corio properly exercised his seniority since the Rules do not specify exactly how or when such an exercise must be made. Since Corio had greater seniority than Claimant, the Carrier urges that Corio was properly assigned Job 035 over Claimant.

Rule 25 states:

"When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof, shall be reduced, seniority as per Rule 28 to govern; the men affected to take the rate of the job on which they have placed themselves.

Men affected under this rule will be given five days' notice and lists will be furnished local committee.

In the restoration of forces, senior laid-off men will be given preference of re-employment, if available within ten days, unless special request for an extension of time is granted, and shall be returned to their former positions; local committee will be furnished list of men to be restored to service; in reducing force the ratio of apprentices will be maintained.

Men laid off will be required to leave their address with the local committee and foreman.

When forces are reduced or jobs are abolished, men affected will be given the privilege to place themselves according to their seniority. Only such men disturbed by reorganization of the abolition of jobs will be permitted to exercise their seniority under this rule.

An employee who fails to qualify after a fair trial on the new job on which he has placed himself will take whatever position may be open in his line of work.

When jobs are abolished (not under a reduction of force), for a period of six months or less, men affected by such abolition will be restored to their former positions upon re-establishment of jobs.

A job abolished for more than six months will be bulletined upon re-establishment."

A close review of the record herein, in our opinion, shows that the Organization has not met its burden in this case. The five day time requirement contained in Rule 25 is that "[m]en affected under this Rule will be given five days' notice ...." Absent more, a fair reading of that Rule is that the five days' notice is to be given prior to the abolishment of a position. More important, there is no direct evidence as to any backdating of Corio's request for displacement of bid in this case. Instead, only the argument by the General Chairman was presented on this crucial point. Argument is not evidence. Further, the Local Chairman conceded that Corio began working on Job 035 on July 25, 1983, as the Carrier claimed. Under the circumstances of this case, we do not find that Corio exercised his seniority other than within the five day notice requirement.

Since it is undisputed that Corio had greater seniority than Claimant, under the plain reading of the Rule, he was entitled to exercise that seniority.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of October 1986.