

PUBLIC LAW BOARD NO. 4698

Case No. 44 Award No. 44

PARTIES TO DISPUTE:

Brotherhood Railway Carmen Division Transportation
Communications International Union
-and-
CSX Transportation, Inc.

STATEMENT OF CLAIM:

- No. 1 That the Carrier allowed Carman T. L. Reynolds to remain on the Carmen's Dayton, Ohio Western Region, Point No. 28 Seniority roster after he accepted a permanent position as a Yardmaster in violation of Rule 28 of the controlling Agreement, as amended.
- No. 2 That the Carrier be ordered to remove Carman T. L. Reynolds from the Carmen's Dayton, Ohio Western Region, Point No. 28 Seniority roster.

FINDINGS: The essential facts in this case are relatively straightforward. The basic question before the Board is the appropriate application of pertinent portions of Rule 28, 28½ and Section 1, Article VIII of the November 19, 1986 National Agreement.

Rule 28 states that:

Seniority of employees in each craft covered by this Agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft.

Rule 28½ states:

(a) Mechanics in the service of this Company, when promoted to supervisory or official positions, do not sacrifice their seniority rights as mechanics as long as they remain in continuous service of this Company. Their seniority as such shall be within their craft at the point where they last worked as a mechanic or at such other points where they hold seniority and do not stand for work.

Article VIII, 1986 National Agreement states:

Section 1

Effective November 19, 1986, all employees promoted subsequent thereto to official, supervisory,

or excepted positions from crafts or classes represented by BRC shall be required to pay an appropriate monthly fee, not to exceed monthly dues, in order to retain and continue to accumulate seniority. A supervisor whose payments are delinquent shall be given a written notice by the appropriate General Chairman of the amount owed and ninety (90) days from the date of such notice to cure the delinquency in order to avoid seniority forfeiture.

The record shows that the Claimant established seniority as a Carman on January 1, 1979 at Hamilton, Ohio. On April 20, 1990, after a furlough, he established seniority as a Carman at Dayton, Ohio. Subsequently, on May 28, 1991, following training as a Yardmaster, the Claimant was awarded a regular relief Yardmaster position at Dayton.

The Organization, with great skill on the property and before this Board, essentially argues that the Claimant voluntarily left his Carman position, that the action cannot be considered a promotion, that the Yardmaster position does not supervise Carmen and that it is not an official position. Therefore, pursuant to Rule 28½ and Article VIII of the 1986 National Agreement, as reinforced by the practice on the property, the Claimant's name should be removed from the Carmen's seniority roster.

In our review of this case, we agree with the Carrier's position. It has been often held that seniority rights are valuable rights and cannot be taken away unless the scheduled rules and the evidence clearly warrant such action. The Organization's construction of Rule 28 clearly is a more conservative application of what we consider to be a relatively clear straight-forward language. We find no language in Rule 28½ that limits the covered positions to the Mechanical Department. Moreover, we find no past practices that would support such a proposition.

Rule 28½ is very specific. It clearly states that "Carman when promoted to supervisory or official position, do not sacrifice their seniority rights ...". The language with respect to the key word "supervisory" contains no restrictions. Accordingly, the only question is whether a "yardmaster" indeed is a "supervisory" position as contemplated by the appropriate rules.

The Organization in its submission recognizes that a Yardmaster's position "does indeed encompass supervisory duties." However, it then attempts to define away the nature of the "Yardmaster" supervisory responsibilities as not "being the issuer of work assignment" and not as the provider of "guidance on mechanical tasks." While this explanation is partially true, it somewhat misses the point.

Carmen, as well as Engineers, Conductors and others most comply with the instructions given by the Yardmaster as appropriate when he performs his official duties with respect to the movement of trains and his other primary responsibilities for the safe and efficient operation of the yard. We hold that these types of duties found in the context of the Yardmaster responsibilities are properly considered to be "supervisory".

Last, we note that Second Division Award No. 11171 (Mikrut) construed the same key contractual language as that which is contained in Rule 28½. The Award held that the Agreement was not violated by retaining an employee on the Carmen's seniority roster while he worked as a Yardmaster.

AWARD

The claim is denied.

M. K. Carmichael
M. K. Carmichael
Carrier Member

E. Muessig
Eckehard Muessig
Neutral Member

I Dissent
Gerald Gray
Gerald Gray
Organization Member

Dated: June 28, 1993