

SPECIAL BOARD OF ADJUSTMENT 1063

Case No. 170
Award No. 170

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company
Norfolk and Western Railway Company, et al.

STATEMENT OF CLAIM:

Claim of Engineer L. W. McWilliams, Tennessee Division, Memphis District, for correction of the Tennessee Division Seniority Roster to reflect Claimant's prior rights yard seniority.

OPINION OF BOARD:

This dispute concerns a seniority question and the issue is whether a "prior rights" road Engineer, who is senior as an Engineer, can displace a "prior rights" yard Engineer in the latter's prior rights territory. The dispute had its origins in the parties' Agreement dated July 2, 1971, with an addendum Letter Agreement dated January 14, 1977, composed to conform with the provisions of the July 2, 1971, Agreement.

Section 4 of the July 2, 1971, Agreement defines the term Prior Rights Engineers as follows:

"Section 4

All engineers holding a yard seniority date on the date road and yard seniority rosters are combined, will be referred to or known in the future as PRIOR-RIGHT YARD engineers. All engineers holding a road engineer's seniority date on the date road and yard seniority rosters are combined, will be referred to or known in the future as PRIOR-RIGHT ROAD engineers. All engineers referred to in Section 3 of this agreement will be referred to or known in the future as DUAL-RIGHT engineers."

The third paragraph of the January 14, 1977, Agreement is pertinent to our dispute and reads:

"Those employees now holding seniority as firemen who have not established seniority as engineer shall elect on the date of their promotion as to which roster they

desire prior rights as engineer. They shall also advise in writing on the date of their promotion if they elect to have their name removed from either the road or yard roster."

The claim arose when a prior rights Road Engineer, who had a senior date as an Engineer, displaced Claimant on March 11, 1996, from his regular yard assignment. The Organization protested this action and now requests the Board to correct the roster to reflect Claimant's prior rights status.

Succinctly, the Carrier asserts the senior employee was properly allowed to displace Claimant, "prior rights notwithstanding". In effect, the Carrier is requesting the Board to concentrate on the seniority of the employee exercising the displacement rights and ignore the "prior rights" of the employee being displaced.

The primary purpose of seniority rules is to eliminate contentious claims over who has the preferential right to own a position. Assuming the senior employee is qualified, generally there is little room for dispute regarding appointment of the successful applicant. However, in this case, the parties stirred in another ingredient, which complicates the procedure, because it mandates reference to "prior rights" as a basis for selection. As noted earlier, the January 14, 1977 Agreement compelled firemen who were to be promoted to elect the roster (road or yard) on which they desire prior rights as engineer. Therefore, some meaning must be ascribed to this command.

In the interpretation of contracts, meaning should be given to all provisions so they are harmonious and sensible; and an interpretation which gives reasonable meaning to all its provisions will be preferred to one which leaves a portion of the Agreement extraneous or inexplicable. Another rule of construction commonly applied by courts and arbitration tribunals, is the interpretation which makes the contract fair and reasonable is preferred to one which leads to harsh or unreasonable results. Therefore, it is said an interpretation of a contract which would lead to a forfeiture will not be favored.

In this case the Organization makes the impressive point there was only one purpose served in requiring an election of "prior rights" to an Engineer on their respective territories and that was to ensure and protect them against displacement by a senior employee without "prior rights". Otherwise, they insist, prior rights would be an empty vessel, without substance or