

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 184**

**Statement of Claim:**

Claim on behalf of Electrician J. E. Robinson in Bellevue, Ohio, in that the Carrier reimburse Mr. Robinson for lost wages and differentials beginning April 24, 2019, as a result of the Carrier's improper denial of his seniority right to displace a junior employee.

**Background**

Claimant J. E. Robinson had been out on approved medical leave for several years. He returned to service as an electrical worker at Bellevue, Ohio on April 24, 2019. While Claimant had been out on leave, his former position had been abolished. He thus sought to displace junior electrician Bryan Cloud in a Supervisory Gang Leader position. The Carrier denied Claimant's attempted exercise of seniority to displace Cloud, which the Organization timely grieved.

**Relevant Contractual Language**

The Collective Bargaining Agreement between the parties includes the following provisions, in pertinent part:

**Rule 17: Vacancies or New Positions**

(A) New positions and permanent vacancies shall be bulletined previous to or within ten (10) days following the dates such vacancies occur for a period of five (5) days.

...

(E) An employee shall be given a reasonable trial to prove his qualifications....

(F) An employee who is absent from work due to vacations, suspension, disability, sickness, or military leave, may, within five (5) days after his return to work ... make application for positions bulletined during his absence....

If the position the returning employee last held was ... abolished while he was off, the employee ... may, within five days after his return, make application for positions bulletined during his absence....

If the position the returning employee last held had been abolished ... the returning employee would be entitled to exercise his seniority and displace to any position held by a junior employee.

**Rule 18: Gang Leaders**

Positions of hourly rated gang leaders assigned to work part time with their tools in addition to supervisory work (Working Gang Leaders) will be bulletined to the journeyman electricians.

...

Hourly rated gang leaders assigned to work as supervisors under the direction of the foreman (Supervisory Gang Leaders) may be appointed from the ranks of journeymen electricians with consideration given to seniority, experience and qualifications.

**Rule 23: Readjustment of Forces – Displacement Rights**

...

(B) Any employees affected thereby shall, if qualified (reasonable trial to be afforded to determine qualifications), be privileged to displace within forty-eight (48) hours any employee his junior in point of service....

**Contentions of the Parties**

The Carrier contends that it did not violate Rule 17 §§ E and F, and Rule 23, by refusing to permit senior electrician Claimant to displace Supervisory Gang Leader (SGL) Bryan Cloud. According to the Carrier, the Organization failed to meet its burden of proving the contractual violation it alleged. The Carrier argues that Claimant was not entitled to displace Cloud because Cloud had been appointed to his SGL position under Rule 18 in 2011. Claimant never expressed any interest in the SGL position until 2019. Appointed positions are not subject to displacement on the basis of seniority, the Carrier submits. Rather, as Rule 18 specifically provides, seniority is only one factor considered in appointing employees to SGL positions, along with experience and qualifications.

The Organization argues that under Rule 17, Claimant should have been allowed to exercise his seniority to displace Cloud, with a reasonable trial of his ability to perform the

responsibilities of the position. According to the Organization, a “reasonable trial” is the proper mechanism to determine whether to allow displacement under Rules 17 and 23. As in Rule 17, Rule 23 states, in pertinent part, that an employee affected by a readjustment of forces may displace any junior employee if qualified by reasonable trial. The Organization emphasizes that Rule 17 (F) provides that if a returning employee’s prior position was abolished during his leave, he “would be entitled to exercise his seniority and displace to *any position* held by a junior employee.” The Organization contends that Rule 18 does not protect an employee in any position from displacement by a senior employee. Rather, Rule 18 applies seniority as a factor in appointing SGLs. The Organization submits that the Carrier improperly denied Claimant his entitlement to displace Cloud, rather than affording Claimant a reasonable trial to qualify for the position.

### **Opinion**

The Board finds that the Organization’s reliance on Rules 17 and 23 in the instant matter is misplaced. Rule 17 expressly applies to bulletined positions. The Supervisory Gang Leader (SGL) position into which Claimant wished to exercise his seniority to displace Bryan Cloud is *not* a bulletined position. Rather, under the language of Rule 18, employees are appointed to SGL positions, as was Bryan Cloud. Such appointment is based on three factors: seniority, experience and qualifications. Nothing in the language of Rule 18 indicates that seniority is the primary or determinative factor with regard to SGL appointments.

Moreover, Rule 18 deals explicitly with Gang Leaders and Supervisory Gang Leaders. An important rule of contract interpretation is that specific language takes precedence over general language. Given that the parties included language in Rule 18 that specifies how SGL positions are to be filled, that language trumps the wording of Rules 17 and 23 in the

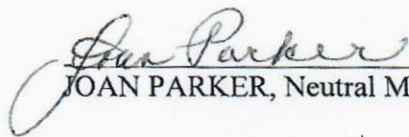
circumstances of this case, which pertain to a grievance concerning placement in an SGL position.

In *N.R.A.B., Second Division, Award No. 12568* (Muessig, Neutral, 1993), the N.R.A.B. considered an analogous issue: whether a senior machinist could exercise seniority to displace a junior machinist who had been appointed to a Lead Machinist position. In deciding against the Claimant, the Board emphasized that the word "appointed" "refers to the Carrier exercising discretion over who[m] it places on a job. The word is used to contrast this method of filling jobs from the strict exercise of seniority." *N.R.A.B., Second Division, Award No. 12568* at 2 (quoting *N.R.A.B., Fourth Division, Award No. 4849*). While not binding on this Board, the distinction made by the N.R.A.B. between bulletined and appointed positions is persuasive, and bolsters this Board's findings herein. The claim is thus denied, based upon the narrow and specific facts of this case. Had this matter involved a Working Gang Leader position, a different conclusion might have been reached.

**Award:**

The claim is denied.

  
CARRIER MEMBER

  
JOAN PARKER, Neutral Member

  
ORGANIZATION MEMBER

DATED: 11/12/2020

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