

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ A Division of TCU
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(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

1. That the Carrier violated the controlling agreement when it improperly denied the carman claimant the right to perform work at Blue Island, Illinois on June 9, 1987 and assigned carmen from South Bend, Indiana to perform work on UP 508082 and SP 615512.

2. That accordingly, the Grand Trunk Western Railroad Company be ordered to compensate Carman E. Magana eight (8) hours at the carmen's time and one-half rate.

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.

On June 9, 1987, Carrier assigned a Carman from the South Bend, Indiana Seniority District to make repairs on UP 508082 and SP 615512. The two cars had previously derailed and were set out on track at Blue Island Yard to clear the main line. It was the Organization's position that said assignment violated Rule 26 of the Agreement, since the work accrued to Carmen employed within the Chicago Seniority District. The Organization observed that on October 1, 1983, the seniority points at Elsdon and Blue Island, Illinois, were consolidated and merged into one Seniority District identified thereafter as the Chicago Seniority District and Seniority Roster. Accordingly, it asserted that the work should have been assigned to a Carman holding point seniority under the Chicago Seniority District.

In response, Carrier did not contest the Organization's basic assertion of point seniority, but instead argued that Rule 26 did not grant Carmen the exclusive right to work at that point or preclude those Carmen from performing work outside that point. It noted that South Bend Carmen were performing work in the vicinity of Blue Island and consequently made non-emergency repairs to the derailed cars. Specifically, it argued that the location of the repairs was between the Chicago Seniority District and the South Bend District, and, as such, the work was assigned on an incidental basis to the South Bend Carmen working on the road territory between the two seniority points. In essence, it asserted that Rule 26, among others, does not entitle employees at a specific point to perform incidental work arising within that geographical area. It cited Second Division Award 10489 as controlling authority.

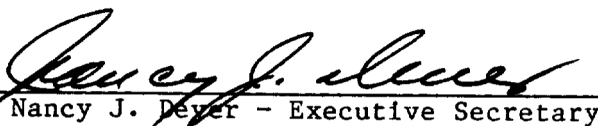
In considering this case, we concur with the Organization's position. The location of repairs was within the seniority ambit of the Chicago Seniority District and well beyond commonly defined incidental work. Since employees at that point are entitled to the employment benefits that flow from seniority protection, Carmen at that point were entitled to perform the repair work. We take judicial notice that Carrier incorporated new material and arguments into its Ex Parte Submission which were never discussed or even referenced by implication on the property. Since this contravenes Circular No. 1, said material and arguments are improperly before us. This is particularly so with respect to the argument of non-exclusivity between points. Conversely, we agree with Carrier that the remedy requested is excessive and thus the Claim is sustained at the straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1990.