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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6536
Docket No. 6354
2-N&W-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Agreement when they assigned Apprentice C. R. Wilburn on October 7, 8, 9, and 12, 1970, to fill the advertised temporary vacancy created by C. W. Lybrook, Carman, who was rated to temporary gang leader.
2. That accordingly the Norfolk and Western Railway Company compensate Carman R. D. Curnutte, sixteen (16) hours at the punitive rate, for the respective dated of October 7 and 8, 1970. Carman W. D. Thompson eight (8) at the punitive rate for October 9, 1970. Carman R. H. Bradford, eight (8) hours at the punitive rate for October 12, 1970.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Car Department employees work in three localities at the Carrier's Portsmouth, Ohio facilities: Transportation Yard, B Yard and Back Shop. On October 7, 1970 a temporary vacancy for a carman in the B Yard was advertised. Petitioner alleges that an apprentice was used to fill this vacancy for four days. It is further stated (and agreed to by Carrier) that the long standing practice had been to fill such temporary vacancies with the youngest carman in the same class in the same seniority district in order to avoid premium payments.

(The Organization specifically alleges violations of Rules 1 $\frac{1}{2}$ (e), 13, 17 and 102 of the Agreement by the use of the apprentice instead of a carman for the temporary vacancy. Rule 1 $\frac{1}{2}$ (e) deals with the creation of relief assignments;

Rule 13 provides for overtime payments for employees changing from one shift to another; Rule 17 deals with posting vacancies for five days before they are filled permanently; Rule 102 defines a carman as an employee who was completed a four year apprenticeship, or the equivalent. We do not find that these rules support Petitioner's allegations.

With respect to the events in question, Carrier denies that the apprentice filled a carman's temporary vacancy and insists that it was common practice to supplement the work force in the B Yard with personnel from the Back Shop, including apprentices, dependent on the variable work requirements. The Organization has submitted no evidence that the apprentice in fact filled the posted temporary vacancy.

We are aware of the long standing controversy (throughout industry) on the subject of apprentices performing journeymen's functions. In this case the record does not support, with proof, such an allegation. Further, as we have said on many occasions, we cannot sustain a claim that has no support in rule or in established practice (see for instance Award 5689).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kellen

Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1973.