

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: { International Association of Machinists
and Aerospace Workers
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the terms of the controlling agreement, the Norfolk and Western Railway Company improperly credited Machinist Apprentice C. A. Slye with overtime service for completion of periods of apprenticeship, thereby placing him ahead of Apprentice A. W. Parks in the seniority standing.
2. That accordingly, the Norfolk and Western Railway Company be ordered to restore Apprentice Parks and Apprentice Slye in their proper seniority standing.

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 employe 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.

In this dispute the Organization claims that Carrier improperly credited Apprentice Slye with overtime service in completing periods of apprenticeship with the result that he was placed ahead of Apprentice Parks in seniority standing.

The Organization relies on Rule 39 of the schedule agreement in support of its position. The pertinent portion of that rule reads as follows:

"Applicants for regular apprenticeship shall be between 16 and 23 years of age, and, if accepted, shall serve eight periods of one hundred and thirty (130) eight-hour days of service each, overtime excluded. If retained in the service at the expiration of their apprenticeship, they shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts." (Underscoring added.)

Carrier contends that there has been no violation of the agreement, and further, that custom and practice prior to and subsequent to the agreement supports the action taken by Carrier.

Despite the Carrier's contentions, the record reveals that Apprentice Slye was improperly placed ahead of Claimant under the particular facts and circumstances of this dispute.

The Board further finds that the procedural issues raised by Carrier are of no consequence.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1974.