

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7018
Docket No. 6847
2-MP-EW-'76

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
(Electrical Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated and continues to violate the Apprentice Agreement by denying to Apprentice Electricians J. E. Mayfield, W. E. Arendt, Jr., C. L. Green, M. A. Jeu, W. D. Godwin, and R. L. Jordan their respective rate guarantees as set forth in the January 31, 1973 Letter Agreement.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to make each of the named claimants whole with respect to the difference between their prior in service classification pay rate and the apprentice basic rate; and,
3. That such adjustment to be computed from the indenture date of the individual claimant and shall be continuous until such time as this violation is otherwise corrected.

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.

All claimants are laborers represented by the Firemen & Oilers, who are part of System Federation No. 2, and each entered the electrician apprentice program pursuant to a Letter of Understanding dated January 31, 1973. The dispute concerns their right, under this agreement, to retain the higher laborer's pay rather than the pay applicable to apprentices.

It is the claimants' contention, advanced by the Organization, that the Understanding clearly provides that "...employees in service on the effective date of the Memorandum Agreement who meet the criteria for entrance into the new apprentice training program will, upon entering the apprentice training program, be paid the rate of pay for apprentices provided by the Memorandum Agreement or the rate of pay of the position held at the time they enter into the program, whichever is greater."

The Carrier contends this provision is not applicable across craft lines. It was intended solely for the protection of those in-service helpers who desired to enter apprenticeship programs for their individual craft. Further, it is pointed out that the Firemen & Oilers were not a party to the Understanding.

The correspondence between the parties, including references to discussions while on the property, indicate that each side supported a different interpretation of the Understanding. The Organization relies upon letters from various General Chairmen, including some who participated in the negotiations, to support their interpretation. Although the Carrier maintained a position in opposition it was not until its submission to this Board that it fully expanded and explained its interpretation. This lead the Organization to urge this Board to disregard these arguments because "...the Carrier has introduced new evidence of illustrations to emphasize this new avenue of argument which was never the subject of correspondence nor the subject of discussion on the property by Management with the General Chairmen..."

We do not agree. While on the property each held to its views on interpretation of the agreement. In its submission before this Board the Carrier's arguments were expanded but they were not new and, therefore, subject to exclusion.

The Organization's reliance upon the individual interpretations of the General Chairmen is a matter open to question by the authorities. See Wigmore on Evidence, Sections 2462, 2466, 2470. We believe the reasoning of the Second Division Award 6947 should be controlling here. That case involved the same parties in a contest over the same Understanding in the same respect. There, however, a painter's helper rather than a laborer moved to electrician apprentice. Referee Leiberman observed that the dispute depended upon the meaning of the term "employees" in the Understanding. He analyzed the agreement through illustrative examples and concluded that this term "...refers to employees of each craft and is not generic to employees of Carrier or even to employees in other shop crafts as a group."

We agree with this interpretation and, as a consequence, the claim must be denied.

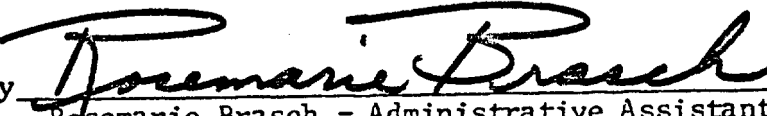
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March, 1976.