

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (System Federation No. 25
(Railway Employees' Department
(AFL - CIO - Electrical Workers
(
(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That, on Tuesday, October 16, 1973, the Terminal Railroad Association of St. Louis, Missouri, violated the Controlling Agreement, particularly Rule 26, when Carrier supervisor dispatched Electrician W. Browne from their Brooklyn Shops to work on engine 1206 at 14th Street, a separate seniority entity where electricians are actively employed.
2. That, accordingly, the Terminal Railroad Association of St. Louis be ordered to compensate (Breman Avenue - 14th Street) Electrician W. D. Mowe, two hours and forty minutes time, at time and one-half, for this October 16, 1973 violation; and,
3. That, in addition thereto, Carrier be further ordered to pay to the Claimant, an accrued interest on the principal amount claimed, computed at 6% per annum and compounded annually from the anniversary date of the claim.

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.

On Tuesday, October 16, 1973, Carrier supervisor dispatched Electrician Browne from their Brooklyn Shops to work on engine 1206 at 14th Street, a separate seniority entity where electricians are employed. The Organization contends that Rule 26-Seniority is a general

rule and is applicable to the assignment of work at each seniority point; that Rule 10 (a) does not provide nor permit the moving of employees during their assigned hours from one seniority point to another, and is not a special rule but a general rule and can not take precedent over another general rule. The Organization further contends that Rule 10(a), if applied as urged by Carrier, would leave Rule 26 meaningless; and that Award No. 1563, depended upon by Carrier to uphold Carrier's position, is not relevant for the reasons that the involved Claimant in Award No. 1563 was sent to fill a position on another seniority district on his rest days. In this dispute, Claimant was transferred during his work-day assignment. The Organization further contends that Award No. 1563 is not pertinent to this case for the reason that it is a dispute concerning a rate of pay - not the right to transfer from one seniority district to another. Carrier contends that Rule 26 is a general rule and in no way precludes the moving of employees as was done in this dispute; that Rule 10(a) specifically permits the moving of employees during their assigned hours, is a special rule, and, therefore, takes precedence over general rules; that Rule 10(a) would be rendered meaningless if Carrier were not permitted to move employees from their regular point of duty during their working hours for temporary service elsewhere; that past practice on this property inclusively indicates that both the Organization and Carrier have recognized the right to move employees, as was done in this case, under the existing Rules 10 and 26, and as admitted by the Organization in Award No. 1563.

No awards have been cited by either party that interpret the language contained in Rule 10(a). Rule 10 (a) is as follows:

Employees required to leave their regular point of duty during their working hours for temporary service elsewhere, will be paid ***** until relieved or, at their option, returned to their regular point of duty.

It appears to this Neutral that although Rule 26 does not specifically prohibit a temporary transfer of employees from one seniority district to another within a system, Rule 10 (a) does not specifically allow transfer of employees from one seniority district to another within a system. It further appears to this Neutral that it has been the understanding and practice of each of the parties to this dispute both the Carrier and Organization, on this property, have long recognized that under the provisions of Rule 10 (a) and (b), Carrier may properly transfer an employee from one Seniority district to another Seniority district for temporary duty within the system. Carrier cites the language contained in the first paragraph of "Position of Employees" which recognizes the propriety of Carrier's conduct in this instance. The "Position of Employees" contained in Award No. 1563 constitutes probative evidence that the transfer of employees between seniority districts on Carrier's system has long been recognized. Rules 10

and 26 have been in effect on this Property for 28 years. Award No. 1563 arose from an incident occurring on November 17, 1950 - therefore, these rules were in effect at that time. Past practice may be considered in interpreting provisions of an ambiguous rule or rules. This Board, therefore, finds that past practice is determinative of this dispute, and particularly the application of Rules 10 and 26 of the agreement.

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 /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.