

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7207
Docket No. 7063
2-CRI&P-CM-'77

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago, Rock Island and Pacific Railroad Company
((William M. Gibbons - Trustee)

Dispute: Claim of Employees:

- (1) That under the terms of the applicable Agreement the Carrier improperly furloughed Carpenter Max Gomez and retained a Janitor by the name of Chester Carter on Carpenter's work.
- (2) That under the terms of the applicable Agreement Janitor Chester Carter was improperly used as a Carpenter.
- (3) That accordingly the Carrier be ordered to compensate Max Gomez eight hours pay for December 24, 1974 and all dates subsequent that Chester Carter was used on Carpenter work and to compensate Carpenter E. Krawisz, G. Throw, J. Ford and M. Gomez eight hours pay for each day that Chester Carter was used on Carpenter work during the sixty days preceeding December 24, 1974, such payment to be equally divided amongst them.

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.

Carrier maintains a force of employees to perform various maintenance and repairs to its station, offices, etc. The Organization represents employees in four (4) seniority subdivisions (Painters, Carpenters, Cabinet Makers-Upholsterers) which maintain separate seniority lists.

Initially, we will consider the Claimant's assertion that Carrier violated the Agreement by its process of selection of Carter to be a Painter in late October of 1974.

The Organization asserts that Rule 55 clearly specifies the experience required for a carman, and cites Rule 40 to demonstrate the only appropriate method of filling vacancies:

"PROMOTION OF HELPERS: If there are no furloughed employes of the craft or class in which a vacancy exists it is agreeable to promote the senior helper of the craft or class in which such vacancy exists provided he has at least two years- experience as a helper in that class or craft and is able to perform the work. If no qualified helper of the craft or class in which the vacancy exists desires the promotion or none is available, the General Foreman and the Local Committee will confer and select the helper to be promoted, giving preference to the senior helper of the other crafts, parties to this Agreement, providing he has the ability to perform the work. Seniority as a journeyman will start as of the date promoted. Helpers promoted under this rule will forfeit helper's seniority after sixty (60) days' service as a mechanic."

Rule 39 provides:

"Due to lack of work within the various crafts and classes, it is agreed that when Machinist, Sheet Metal Workers, Carmen (Painters and Carpenters, Cabinet Makers and Upholsterers), Electricians and Boilermakers, Helpers, and Pumpmen, do not have sufficient work within their classification to keep them busy during daily shift, or when it is necessary to put all or part of the force to work on other than their classified or regular assigned work, they can be used to do other work where they might be needed. Their rate of pay while so working to be governed by their classification and work to which they are regularly assigned, except as provided for in Rule 10."

The Carrier has demonstrated that it took all reasonable efforts to fill the position available to it and no one registered any interest in the position. Finally, when Carter, a janitor, bid for the position, it was awarded to him, and he relinquished his other position with the Carrier.

As we read Claimant's contention to its logical conclusion, the Carrier could be placed in a position of never being able to fill a vacancy. We doubt that the parties ever intended such a result. But, in any event, we feel that for the purposes of this case, we must consider that Carter was a painter - not a janitor, at the time of the layoff of Claimant. The fact that the Organization, on the local level, agreed to Carter's selection is dismissed by the Organization on the ground that local representatives may not enter into binding agreements. Be that as it may, no grievance was filed concerning the appointment and there is un rebutted evidence that the Carrier has filled such position, in the past, in a similar manner without objection.

We stress, of course, that there is no evidence of record that Carrier took action to fill the vacancy while - at the same time it was contemplating a reduction in force in the Carpenter's class. In other words, we find no basis to presume a subterfuge to do indirectly that which is directly prohibited.

The Claimant asserts that Carter has performed carpenter work after Claimant was furloughed. Were that the case, certain consideration would control our determination. But, we find nothing of record to demonstrate what carpentry work was done, at what time and at what location. We will dismiss the claim because of such failure of proof.

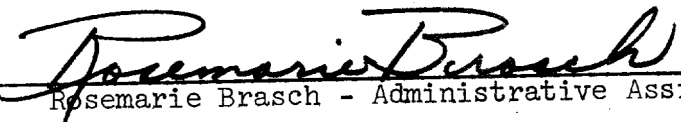
A W A R D

Claim dismissed.

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 12th day of January, 1977.