

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That carrier violated the applicable provisions of the current working agreement in consistence with Article III of the Agreement dated June 15, 1953 by allowing Mr. David Rhea to accumulate time under the 1040 days carman upgrading program and subsequently be placed on the Carmen's Seniority Roster at Jackson, Ohio, while senior carmen and carmen helpers were furloughed.
2. That carrier violated Rule 30 $\frac{1}{2}$, Section 1, paragraph (a), during the progression of the claim.
3. That accordingly, carrier be ordered to compensate furloughed Carmen R. L. Grimes, J. A. Smith, C. J. Landers, R. W. Litteral, and L. G. Bragg for the time for the hours worked by Mr. David Rhea in a supervisory capacity.

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.

We find that the Carrier did violate the Agreement by allowing Mr. David Rhea to accumulate time under the 1040 day Carman upgrading program and subsequently placing him on the Carmen's Seniority Roster at Jackson, Ohio. See Award No. 7498 of this Division where the Board held that Mr. Rhea's name should be removed from the Carmen's Seniority Roster.

We find no violation of Rule 30 1/2, Section 1, paragraph (a) under the narrow facts of the instant case, where the Claim submitted to the Superintendent Car Department, by letter of March 12, 1975, beyond the protest based on the Agreement concerning Mr. Rhea being allowed to accumulate days under the Carman upgrading program and being allowed to take a position on the Carmen's Seniority Roster, was totally ambiguous as to the remedy sought by the Claimants.

The Claim before this Board for compensation for Carmen Grimes, Smith, Landers, Litteral and Bragg, as stated in Part 3 of the Petitioner's Claim, is denied since the record is clear, and the Organization freely admits to the fact, that Mr. Rhea worked on the time in question on a non-agreement supervisory position. As such Mr. Rhea's working the supervisory position did not deprive the five Claimants of any work opportunities.

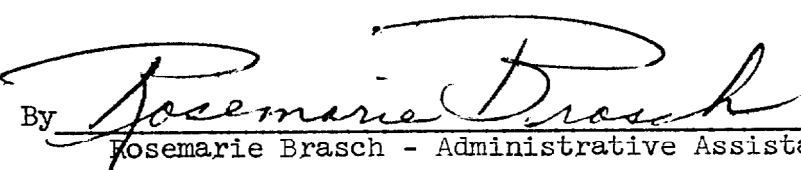
A W A R D

Sustained as per Findings.

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 16th day of June, 1978.