

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company violated the terms of the controlling agreement when the Division Manager did not make reply to Local Chairman Onstott's claim dated January 21, 1979 within the prescribed time limits.
2. Upgraded Carmen Allan Martin and Tall Shelby, Madison, Illinois, were deprived of their rightful seniority dates when Carrier gave special consideration in filling a vacancy in the Apprenticeship Program to Carmen Helper Arthur Molinar, in violation of the Apprentice Agreement and Rule 28 of the controlling agreement.
3. That the Chicago and North Western Transportation Company be ordered to give Upgraded Carmen Allan Martin and Tall Shelby seniority dates as apprentices, dating from the date Apprentice Arthur Molinar was inducted into the Apprentice Program.

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.

The Organization claims that Carrier violated the Agreement, Rule 28, and the Apprentice Agreement, Item 10, when it allowed a junior employe into the apprentice program before the two Claimants, A. Martin and T. Shelby. In the Employees' view, Claimants were deprived of the retroactive seniority they would have earned by completing the program earlier. The Organization also asserts that Carrier violated Article V(a) Agreement of the August 21, 1954, by failing to properly deny the claim.

Carrier on the other hand, insists that it did not violate the Agreement. For this reason, it asks that the claim be denied.

First, Carrier asserts that the Organization failed to present a claim or grievance in writing within the required sixty (60) days. Since it received no claim until April 21, 1979, Carrier argues that it was not obligated to disallow a claim. It insists that it was not required to respond.

Second, Carrier urges that the Organization has failed to demonstrate how the junior employee received special preference. It also insists that no rule of the Agreement supports the Union's contention.

After analyzing the evidence and arguments presented we must conclude that the grievance is without merit. Stated simply, the Organization has not met its burden of proving that any rule has been violated that would warrant the granting of apprentice seniority. In this regard, we note that at the time of the claim that Claimants already had Carman seniority. We will dismiss the claim for lack of proof.

However, before closing we feel constrained to comment about the manner in which this claim was handled. The Organization's delay in filing an original claim is simply unexcusable. We are persuaded that no initial claim was filed. Similarly, Carrier's failure to respond, even if the claim had been misplaced or appeared to be moot, is equally unexcusable under Article V(a).

Frankly, the record does not afford this Board with sufficient information to evaluate fully the parties' respective positions. Thus, we will dismiss the claim in its entirety.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March, 1982.