

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute:

{ Brotherhood Railway Carmen of the United States
and Canada

{
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That Carrier violated past practice, historically so, on the property, infringed upon the contractual rights of Claimants, and displayed a total disregard of the rules of the Agreement, specifically, Rule 28, when on the date of February 21, 1980, they failed to call DeForest Junction carmen to a derailment of two Engines at Utilities Coating Siding, Niles, Ohio, territory manned by DeForest Junction, Ohio carmen for over fifty years consistently, a practice which has been mutually acceptable, and workable, historically so, and allowed Carmen out of Haselton, Ohio to be called for this derailment. Claimants in this dispute are DeForest Junction Carmen, N. Kichton, J. Miovac, and A. Catalano.
- No. 2. That Carrier be ordered to compensate Claimants herein for all losses arising out of this violation as follows: Carmen, N. Kichton, for nine (9) hours' pay at the time and one-half rate, J. Miovac for six (6) hours' pay at the time and one-half rate, and A. A. Catalano for six (6) hours' pay at the time and one-half rate.

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.

Claimants are employed at DeForest Junction, Ohio which, according to Rule 28 of the applicable Agreement, is Seniority Point 27 in the Carrier's Central Region. On February 21, 1980, the Carrier called and used carmen from Haselton, Ohio to reraill two engines at Niles, Ohio. Haselton is designated as Seniority Point 24. Niles, Ohio is not a designated location under Point 27 or Point 24 or any other seniority point listed in Rule 28.

The Organization contends that over the last fifty years a practice has been established that carmen from DeForest Junction have the exclusive right to

perform wrecking work at Niles. The Carrier denies the existence of any past practice and affirmatively contends it could send carmen from Haselton since Niles is not specifically listed in Rule 28.

Since Niles is not listed as a seniority point in Rule 28, the Carrier retains the discretion to call carmen from any seniority point unless the Organization proves that carmen from DeForest have continuously and historically performed rerailing service at Niles. The Organization asserts the existence of a past practice but the record reveals no objective evidence to support its assertion. Absent proof of a past practice, the Carrier could properly call carmen from Haselton to rerail the engines on February 21, 1980.

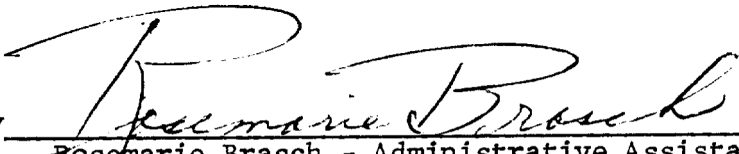
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.