

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9763
Docket No. 8914
2-SLSF-CM-'84

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the provisions of the current controlling Agreement and the Memorandum of Agreement signed at Springfield, Missouri, the 8th day of July, 1977, effective July 1, 1977, when it improperly promoted junior painter apprentices Y. D. Scott and C. A. Fisher ahead of senior apprentice R. T. Eddy.

2. That accordingly the St. Louis-San Francisco Railway Company be ordered to compensate carman painter apprentice R. T. Eddy for the difference in pay between the carman painter apprentice rate of pay and journeyman carman painter rate, commencing January 22, 1979, for the Carrier's refusal to promote painter apprentices in seniority order.

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 employees involved in this dispute are respectively carrier and employees 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 Claimant, a Painter Apprentice, was furloughed in December 1978 as part of a "large seasonal layoff" (as characterized by the Carrier). Also furloughed were two other Painter Apprentices then working as upgraded Journeyman Painters, both of whom had less seniority than the Claimant.

When the force was restored to work on January 22, 1979, the two employes who had been working in upgraded positions were returned to that status, and the Claimant was returned to his Apprentice position. (Two days later, owing to an increase in service requirements, the Claimant was upgraded.)

The Organization argues that, upon return from furlough, the Claimant should have been given upgraded status in preference to one of the less senior Painter Apprentices.

At issue here is the interpretation of a portion of Section 6 of the July 1, 1977 Memorandum of Agreement which reads as follows:

"6. (a) The practice of upgrading carman helpers is discontinued. In the event of not being able to employ journeyman mechanics of the Carmen's Craft or carmen with three years' experience, the force may be increased by promoting the senior qualified apprentices ...

(e) A list of temporary carmen shall be prepared and maintained at each seniority point of those apprentices promoted to mechanics as set forth in paragraph (a) hereof. Such list of temporary carmen shall show the name of apprentices promoted in date order and the date promoted. In the event of more than one employe being promoted on the same date, they will rank according to the number of hours credited at that time towards completion of the training. When force is reduced, the junior temporary carmen will be set back first."

This issue, involving the same parties, was recently considered and resolved by the Board in Award No. 8606 (Marx). In sustaining the claim, that Award stated:

"The Memorandum of Agreement is clear, in Section 6 (e), as to the order of reducing temporary carmen; i.e., 'the junior temporary carmen will be set back first.' Coming as part of a paragraph dealing with the order of listing of temporary carmen, this clearly refers to service in this capacity and not as apprentices.

Paragraph 6 (e) is silent, however, as to restoring the positions of temporary carmen. As the Organization points out, this is covered in Paragraph 6 (a) which states that, when needed, 'the force may be increased by promoting the senior qualified apprentices'. (Emphasis added).

"However well intended the Carrier's action in giving preference to those employees who were on the temporary carmen list prior to the December 23, 1977 furlough, the Board cannot find support for this in the specific words of the Memorandum of Agreement. Paragraph 6 (a) is concerned with upgrading and speaks of priority for 'senior qualified apprentices'. (Emphasis added)"

Award No. 8620 (Dennis) is to the identical effect.

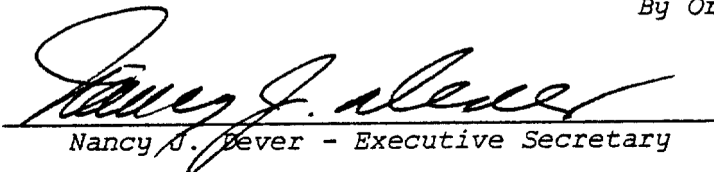
The Board finds the reasoning in these two Awards fully applicable to the dispute here under review and has no basis to reach a different conclusion.

A W A R D

Claim sustained to provide the difference in pay for January 22 and 23, 1979.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 18th day of January 1984.