

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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. Carman Larry Lopez was deprived of his contractual rights when he was not given the privilege to transfer to Savannah - St. Joseph, Missouri on September 26, 1980 and October 6, 1980, in compliance with Rule 26 of the controlling agreement.
2. That the Chicago and North Western Transportation Company be ordered to make whole Carman Larry Lopez, restore him to Carrier service with all seniority rights, holidays, sick leave and all other benefits that are a condition of employment unimpaired, and be compensated for all time lost plus 6% annual interest on all such lost wages; and additionally, reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time he has been unjustly held out of service since being denied Carman's position at Savannah, Missouri."

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 and 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 were given due notice of hearing thereon.

The Claimant, Chairman Larry Lopez, was assigned to job 021 at Kansas City, Missouri. On September 29, 1980 he was informed that due to a reduction of forces, he would be furloughed at the end of his shift on October 6, 1980.

The Organization contends that Mr. Lopez submitted a letter dated September 29, 1980 and another dated October 6, 1980 to the Division General Foreman at Kansas City, which read as follows:

9-29-80

"Att

D.J. Weber

Request for transfer to St. Joe or Savannah per Rule #26.

Larry Lopez."

10-6-80

Att:

Carforman

Request for transfer to Savannah or? St. Joe for vacancy under Rule #26.

Larry Lopez."

The Organization contends that Mr. Lopez's contractual rights under Rule 26 were violated by the Carrier when it selected a junior employee, Mr. C. F. Christiansen, to transfer to Savannah/St. Joseph, Missouri, causing Mr. Lopez to be furloughed rather than retain his employment. The Organization contends that the only place the bulletin was posted was in a locked oil shed in St. Joseph, Missouri.

The Carrier contends that on October 6, 1980 the Car Foreman at Kansas City received two notes from Mr. Lopez, both dated that day. The first note requested a transfer to Savannah (Missouri) or "St. Joe" (St. Joseph, Missouri). The second note was a bid on Job 004 at Savannah under Bulletin No. 080. The Carrier contends that it never received a request to transfer from Mr. Lopez dated 9/29/80. The Carrier contends that Job No. 003 was properly advertised by Bulletin No. 101 dated September 24, 1980 and expiring September 28, 1980, and that this position was awarded to Carmen Christensen, a Carman junior to Mr. Lopez, who was also furloughed at Kansas City. The Carrier submitted a copy of Mr. Christensen's request to transfer which was dated September 28, 1980. The Carrier states that it awarded the position to Mr. Christensen on October 1, 1980 and that it did not receive any requests from Mr. Lopez until October 6, 1980. The Carrier contends that the bulletins in question were posted at the fueling pump house facility and on the bulletin board at the office in St. Joseph, Missouri by General Foreman Weber.

The Organization contends that Mr. Lopez sent a request to Mr. Weber on 9/29/80 (which was after the expiration of Bulletin No. 101), the Carrier disagrees with this contention and states that no request was made to the Carrier until October 6, 1980. The Organization contends that the bulletins

were posted in a locked oil shed in St. Joseph, the Carrier contends that the bulletins were posted at the fueling pump house facility and on the bulletin board at the office in St. Joseph. From the record before this Board we cannot resolve these differing assertions of fact; and since the Organization, the party with the burden of proof, has not presented evidence to this Board which would persuade the Board that its version of the disputed facts is the true version, we are compelled to consider the case based solely on the facts of record not in dispute. Both the Carrier and the Organization agree that a request was made by Mr. Lopez on October 6, 1980. This request was not timely as Mr. Christiansen had filed his request prior to the expiration of the bulletin on September 28, 1980 and was awarded the position on October 1, 1980. We are therefore compelled to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 29th day of January 1986.