

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 15 and 27 of the Shop Crafts Agreement when they failed to bulletin the A.A.R. write-up position, which was a day shift position with Saturday and Sunday as rest days, when Carman H. Wodarck vacated the position, due to retirement.

2. That the Soo Line Railroad Company be ordered to compensate Louis Schweizer eight (8) hours for each Thursday and Friday he is forced to take as rest days and eight (8) hours at time and one-half for each Saturday and double time for each Sunday he is forced to work, effective November 4, 1981, and continuing until claim is settled, when the Soo Line failed to honor Carman Schweizer's seniority when he applied for the position, and the Soo Line Railroad Company gave the position to a Carman with less seniority.

3. The Soo Line Railroad Company again during the course of handling this dispute violated Rule 15, when they allowed Carman Granville and Carman Dievney, both holding A.A.R. write-up positions to exchange their rest days, without posting a bulletin, which again denied Carman Schweizer his seniority to bid on a position.

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.

On November 3, 1981, Carman H. Wodarck retired from a first shift position with Saturday and Sunday rest days at the Soo Line's Shoreham Shops at Minneapolis, Minnesota. Mr. Wodarck's duties, in part, included performing A.A.R. write-up work when needed. Other Carmen at this point also performed this task, in addition to their other assignments, when required. Due to the vacancy on the shift which was caused by Mr. Wodarck's retirement, Carman D. Granville was moved to the position with Saturday and Sunday off from his previous assignment which entailed a work week of Tuesday through Saturday. Mr. Granville's seniority date was September 23, 1970. At the time of the transfer, Mr. Granville also performed A.A.R. billing as part of his previous job duties. Claimant, Mr. Schweizer, at the time of the dispute, was working the second shift in the yard, with Thursdays and Fridays off; and his seniority date was November 17, 1973.

The Organization disputes the Carrier's failure to bulletin the first shift write-up position when said position was vacated by the retiring Carman. The Organization, in support of its basic contention, argues that Rules 15 and 27 of the Current Shop Craft Agreement requires Carrier to advertise any vacancy, and that Carrier does in fact bulletin A.A.R. write-up positions at other points throughout the system.

Rules 15 and 27, cited by the Organization herein, are typical Carmen Bulletining Rules which are commonly found in a majority of other railroads' Shop Craft Agreements.

The Carrier, in the instant case, pleads past practice at this point, arguing that Carman duties at Shoreham Shops are essentially indistinguishable, except for rest days; and that many Carmen perform A.A.R. billing. Therefore, according to the Carrier, since there was no separate and distinct vacancy at this point, the Carrier was not contractually required to advertise the disputed vacancy. The Carrier further substantiates its position by identifying thirteen (13) Carmen at the Carrier's Shoreham Shops who, for the last 40 years, have performed write-up work without bulletin; and according to Carrier, none of these instances have been grieved either by the affected employees or by the Union. The Organization, in counter point to the Carrier's past practice argument, contends that ample Board precedent establishes that where contractual language is clear and unambiguous, as is the case in the instant dispute, any past practice must be rejected.

The Board has carefully read, studied and considered the complete record in this dispute. While it is clear that the Organization has correctly stated Second Division arbitral precedent regarding the basic interpretive principle involved herein, and may, in fact, have proved a technical violation of Agreement as well, Claimant has not suffered any loss in this matter and is thus not deserving of the remedy as claimed. According to the record, Mr. Granville was the most senior Carman and was awarded the disputed vacancy. The record also shows, however, that Claimant, with a seniority date of November 17, 1973, some three (3) years and two (2) months junior to Mr. Granville, could not have successfully bid on the position even if said position was bulletined. For this reason, the dispute must be resolved in favor of Carrier's position and the Board does not have to reach a decision on the merit of the case.

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 23rd day of July 1986.