

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: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier is in violation of the controlling Agreement by refusing to remove former tentative Carman T. L. Stine from the carmen (tentative) (sic) and carman helpers roster at Brunswick, Maryland. Mr. Stine voluntarily accepted a position within the Machinist Craft at Martinsburg, West Virginia, (whether machinist or Working Foreman), voluntarily left and/or abandoned his position in the carmen craft, went to another location and/or seniority point on the Baltimore and Ohio Railroad, accepted employment in another craft, all of which was done without proper provisions, without notification to either the Local or the General Committee, thereby, relinquishing his carman status, voluntarily as of the date of September 9, 1981.

2. That Carrier be ordered to remove former (tentative)(sic) Carman T. L. Stine's name from the tentative carmen and helpers seniority roster at Brunswick, Maryland as requested.

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 employes 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 held seniority as a Tentative Carman in the Carmen's Craft at Carrier's Brunswick, Maryland facility.

On September 9, 1981, the Claimant accepted a promotion to Temporary Foreman, a position which was temporarily vacant, at the Carrier's Martinsburg, West Virginia facility. As a result, on the same day, the Organization filed a Claim requesting that the Claimant be dropped from the Brunswick Tentative Carmen and Helpers Seniority Roster.

The Carrier declined the Organization's Claim contending that the Claimant was temporarily filling a Foreman's vacancy in accordance with Rule 28-1/2 which, in pertinent part, reads as follows:

"Mechanics in the service of this Company, when promoted to supervisory or official positions, do not sacrifice their seniority rights as mechanics as long as they remain in continuous service of this Company. Their seniority as such shall be within their craft at the point where they last worked as a mechanic or at such other points where they hold seniority and do not stand for work."

The Organization contends that Rule 28-1/2 does not protect a Carman like the Claimant who voluntarily abandons his regular position and no longer works in the craft. As support for its position, the Organization cites the Preamble of the Controlling Agreement which, according to the Organization, does not reference "Temporary Foreman" as one of the categories of employees who are covered by the negotiated Agreement.

Said Preamble states as follows:

"Scope of Agreement:

The following rules and working conditions will apply to:

Boilermakers
Blacksmiths
Electrical Workers
Carmen

their apprentices and their helpers (including coach cleaner), in the

Maintenance of Equipment
Maintenance of Way
Signal Maintenance
Telephone and Telegraph Maintenance

and all other departments, performing the work specified herein, superseding all other rules and agreements."

The Organization's Claim lacks merit on substantive grounds. No reasonable Rules of contract construction and interpretation can give greater weight to the Preamble of an Agreement when measured against a clear, specific and unambiguous Rule contained within the same document - - such as Rule 28-1/2.

A fair reading of Rule 28-1/2 would indicate that the parties contemplated the exact situation at bar when they negotiated said language. Rule 28-1/2 clearly preserves the seniority of the Carmen when promoted to supervisory positions (like Working Foremen), provided that those Supervisors remain in continuous service with the Carrier. While some Carmen might perceive that their employment rights are negatively impacted by such an accommodation or might object to such a benefit for employees who are no longer in the Carmen's craft, said language, nonetheless, was agreed to through the process of collective bargaining; it has a reasonable basis in labor-management relations; and it is susceptible to but one and only one interpretation. For these reasons, the Organization has failed in its burden of proving that a Rule violation was committed by Carrier in this dispute. Consequently, the Board has no choice but to deny this Claim.

- A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.