

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Sheet Metal Workers' International Association
Parties to Dispute: (
(The Kansas City Southern Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern Railway Company violated Rule 51, 31, 42 and 29 of the controlling agreement when they employed Mr. J. P. Goodman as Sheet Metal Worker on August 2, 1982, while Sheet Metal Worker Apprentice W. L. Smith, with seniority date of February 16, 1978, was furloughed on October 4, 1981, and remained furloughed at time Mr. Goodman was employed, Shreveport, Louisiana.

2. That accordingly, the Kansas City Southern Railway Company be ordered to reinstate Sheet Metal Worker Apprentice W. L. Smith to service and compensate him in the amount of eight hours (8) per day, five (5) days per weeks at pro rata rate for all time he is withheld from service. Also, that Carrier be required to comply with Rule 41 and furnish complete and accurate list of employees hired and terminated.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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 was an apprentice Sheet Metal Worker on furlough. He had completed thirty four months of the apprenticeship program when he was furloughed in 1981. A fellow employee had completed twenty five months of the Sheet Metal apprenticeship program when he was employed as an Electrician apprentice in 1981. On August 2, 1982 the other employee was employed as a Sheet Metal Worker.

When the other employee was employed as a Sheet Metal Worker, the Organization demanded that he be removed from the roster because he was not qualified under the terms of Rules 31 and 51 of the Schedule Agreement. Accordingly the Carrier met this demand and by letter dated December 18, 1982, terminated this employee and removed him from the Sheet Metal roster.

This Claim has now been made apparently demanding that the Claimant be paid for the time that the other employee was on the roster as a Sheet Metal Worker. The Claim is also made to reinstate Claimant to service.

The Organization demanded and the Carrier acquiesced in the removal of the employee from the roster because he had not completed the apprenticeship program. The present demand is that Claimant who likewise had not completed the program be recalled to service.

This cannot be likened to a situation whereby two employees are on furlough and the junior employee is recalled to a position for which both are qualified. In that situation the seniority rights of the senior employee have been contractually violated. The Claim here seems to be that in the case of two unqualified employees, the least unqualified should have been placed on the position which he had no contractual right to hold.

We agree that there was a basic unfairness done to Claimant because he logically should have been the beneficiary of the wrongful placement. However, not every logical wrong is a contractual wrong. Claimant has pointed to no Rule that would address his situation. The Rules cited for the other employee being unqualified to hold the position also apply to him. His situation can be likened to a legal situation whereby an individual has no standing to complain.

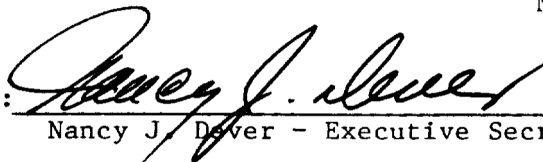
The Board must dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1987.