

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11500
Docket No. 11405
88-2-87-2-69

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated the controlling agreement, specifically Rules 14, 15, 18, 19, 57 and 58 on October 8, 1985 when they authorized Mechanic-in-Charge E. L. Molinsky's name to be listed on the Oelwein, Iowa Carmen's seniority roster with a seniority date of August 27, 1985.

2. That the Chicago and North Western Transportation Company be ordered to delete Mechanic-in-Charge E. L. Molinsky's name and rank from the Oelwein seniority list as a Carman Mechanic.

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.

In the instant case, the MIC was listed on the Oelwein, Iowa Seniority Roster as a Carman with a seniority date of August 27, 1985. Claim of the Organization is that the MIC failed to rescind his Helpers seniority, was not prior listed as a mechanic and did not work the required number of days to qualify. The Organization argues that the listing is in error as his work as a Mechanic-in-Charge (MIC) is a promoted position (as is Foreman) and may not be considered as qualifying time.

The Carrier denies that the seniority listing was violative of the Agreement. Carrier asserts that under Rule 57, he had to accumulate 752 days and did so. His work as an MIC counted toward the necessary days. His listing on the Carman's Seniority Roster was fully supported by the Agreement.

In the instant case, the record as developed on property indicates that he worked as a Carman Helper a total of 103 days from April 7, 1973 until September 5, 1973 when he assumed positions as Assistant Car Foreman and Car Foreman until April 27, 1983. All time as Foreman is neither counted, nor disputed herein. From April 23, 1983, he assumed the position of MIC and counted such time accumulated thereby toward qualifications as a Carman under Rule 57.

This Board notes that seniority was granted after the July 1, 1984 Agreement took effect. The fact that his name does not appear as Carman in 1985 is immaterial, since his request is of September 20, 1985. Carrier's reliance upon Second Division Award 11099 and the former General Chairman's letter is relevant only to the facts and circumstances wherein MIC time was governed under Rule 145.

This case is governed under the July 1, 1984 Agreement which includes Rule 77 superseding both Rule 145 and the former General Chairman's letter. Our review of the applicable Rules, particularly Rules 18, 19 and 57 finds no clear and unambiguous language as to the status of MIC's. The Board notes that Rule 18 separates mechanic-in-charge from supervisory foreman by the word "or" rather than "and"; Rule 19 using the same conjunction. MIC's are different from foreman. Rule 57 refers to any employee who has met the qualifications listed. The MIC by letter of September 20, 1985 stated he qualified by doing "Carman's work." That statement is not refuted. The Organization's primary argument is that the time accumulated as an MIC is supervisory time and not to be counted toward journeyman status. Such evidence is not in the record.

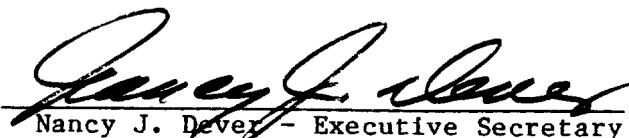
Finding no probative evidence of record that the MIC failed to complete the 732 days of "practical experience at carman's work" as required by Rule 57 (and the April 16, 1984 Memorandum of Agreement), the claim must be denied.

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 15th day of June 1988.