

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: (
(Southern Railway System

STATEMENT OF CLAIM:

1. That the Carrier violated Rule 20 of the controlling agreement when Bulletin No. 22 dated March 27, 1986 was issued.

2. That accordingly, the Carrier be ordered to comply with Rule 20 and list the primary duties of the position being bulletined.

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 Organization asserts that the Carrier violated the Interpretation of Rule 20, Section B, Part 1 of the Agreement. That Interpretation was issued by letter of May 8, 1975 and agreed to numerous clarifications including that:

"(1) While it is not possible to define all duties of a position in the 'Description of Work,' the primary duties of the position shall be included therein."

The Interpretation also agreed to remove language such as "all other duties that may be assigned."

The Organization charges that the Carrier violated the Agreement when it issued Bulletin #22, which under the Description of Work stated only, "Preparing, painting and stenciling freight cars and other Southern Railway property." It holds that language to be vague, non-descriptive and not in compliance with the Agreement. The primary duty of the painter position, such

as "grit blast operator," is not listed. The Organization maintains that the language of Bulletin #22 is analogous to "all other duties that may be assigned."

The Organization further asserts that by a general bulletin listing all of the work that painters do, employees who bid for and are assigned a position can be assigned any work whatsoever. The successful occupant of a position could end up doing the less desirable work while a junior employee might be assigned the more desirable work. The Organization argues that when a position becomes vacant, the successful bidder for that position should be allowed to perform the same work as the previous occupant. The Organization holds that the Carrier must comply with the Agreement and issue bulletins listing the primary duty of each position.

The Carrier disputes the Organization's Claim that Bulletin #22 fails to comply with Rule 20 and the Interpretation of May 8, 1975. The Carrier contends that it has issued similar bulletins for years without protest. Moreover, since painters are assigned to general forces, they must be used as needed. The Carrier asserts its right to assign employees to perform various work. It also argues that the right of a successful occupant of a position to do the same work as the former occupant has been rejected by Second Division Award 10009.

In this Board's review of the instant case, the Carrier's position has merit. The Organization did not establish any limitation by Agreement requiring the Carrier to assign an employee the work of the former occupant. Second Division Award 10009 is applicable. While this Board is sensitive to issues of seniority, it is responsible for the careful Interpretation of Agreements. Nothing in this Agreement limits the Carrier in the manner suggested by the Organization.

Upon the record, Bulletin #22 is no different from numerous bulletins issued since the Letter of Interpretation. If the Organization felt that the Carrier violated an Agreement, the time to take exception was much earlier. Finding no violation of the Agreement and no evidence of variance from 1975 bulletins to the contested one, we determine that the Organization did not prove its case. Past practice and specific language require us to deny the Claim (Public Law Board No. 3858, Award No. 63).

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 March 1989.