

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ A Division of TCU
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, Rule 19, when they denied Carmen J. R. Chavez and M. R. Trujillo the right to transfer to another location under the provisions of Rule 19 and granted carmen with lessor seniority the transfer.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Carmen J. R. Chavez and M. R. Trujillo each eight (8) hours per day, five (5) days per week, at the pro rata rate of pay for carmen, retroactive to February 23, 1988 when they were bypassed for transfer and to continue in like amount until they are actively employed by the carrier on a permanent 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 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 case at bar, the Organization asserts that the seniority rights of Claimants were violated when Carrier allowed two junior Carmen to transfer in violation of Rule 19. Rule 19 of the Agreement reads in pertinent part:

"(a) While forces are reduced, furloughed men on a General Manager's territory will be given consideration in seniority order for transfer to other points on that territory where men are needed, providing they can qualify after reasonable trial to handle the work of the vacant position."

The Organization has presented evidence in this record that Claimant Trujillo had seniority date of May 8, 1978, and was not called ahead of furloughed Carman Lewis, with a seniority date of January 29, 1981, to fill a vacancy at Silsbee, Texas. In addition Claimant Chavez, with a seniority date of May 16, 1975, was senior to furloughed Carman Coleman, with seniority date of May 17, 1977, and was not called to fill a vacancy at Beaumont, Texas. The Organization protests the Carrier's failure to transfer the Claimants under the Rule, supra.

The Carrier denies that the transfers were violative of the Rule. Carrier asserts that both Claimants were "given consideration" and were not accepted due to serious problems in their employment records. The Carrier documents with a list of problems and past practice for its actions.

This Board notes that the extensive record is deficient in supporting the Claim. In the instant facts, Claimant Trujillo filed for a transfer under Rule 19 on May 9, 1986, for transfer to Balen, Amarillo, Albuquerque and El Paso. Nothing in this record indicates support for a Claim against junior employee Lewis accepting transfer to Silsbee, Texas, when Claimant did not request a transfer to that location. There is nothing in the record to show that Lewis did not request Silsbee. Therein, we find no violation with respect to Rule 19 in regards to Claimant Trujillo.

With respect to Claimant Chavez the facts of record indicate a different set of circumstances. The Organization argues that a vacancy existed at Beaumont, Texas which was offered to senior employee Sanchez who turned it down. Thereafter junior employee Coleman was called ahead of Claimant Chavez. The Organization states that Coleman accepted the position at Beaumont, Texas. The Carrier denies by letter of January 27, 1989, that Coleman filled a vacancy at Beaumont and argues that the vacancy thereat was filled by recall and not by a Rule 19 transferee. This is not refuted and stands as fact.

Finding no probative evidence to support the facts of Claim with regards to the on property discussion of a Rule 19 violation by the Carrier, we must deny the Claim. In this instant set of circumstances, substantial probative evidence with regard to Claimants Trujillo and Chavez being passed over for transfer to positions in Silsbee and Beaumont, Texas by junior employees was not shown. This Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.