

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood Railway Carmen/Division TCU  
(  
( Fruit Growers Express Company

STATEMENT OF CLAIM:

1. That the Fruit Growers Express Company violated the controlling Agreement, specifically Rules 23 and 38 of the July 1, 1945 Agreement and the May 26, 1987 Car Cleaner Agreement, when Fruit Growers Express turned the laborers' work over to a newly hired Car Cleaner at Baldwin, Florida.

2. That accordingly, the Fruit Growers Express Company be ordered to compensate Laborer S. L. Jefferson for eight (8) hours per day, five (5) days per week at Laborer's rate of pay, plus all overtime lost and including all benefits from May 2, 1988 until Laborer Jefferson is assigned the job at Baldwin, Florida or recalled back to Jacksonville, Florida. Mr. Jefferson was recalled June 27, 1988.

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.

On April 26, 1987, Carrier and Organization entered into a special Memorandum of Agreement establishing a new classification of "car cleaner." The stated purpose for the Agreement and the establishment of the new classification was below that of existing laborer rates and car cleaners were prohibited from performing mechanical repairs on equipment.

On April 4, 1988, Carrier hired an employee off the street to perform work at Baldwin, Florida. At the time Claimant was a furloughed Laborer at Jacksonville, Florida. The Organization maintains that Claimant should have been afforded the opportunity to work the job, in preference to the new hire, under terms of Rule 23 of the basic working Agreement providing that:

"While forces are reduced, if men are needed at other points, laid off men will be given preference to transfer with privilege of returning to home station when force is increased. . . ."

The Board agrees with the Organization. The May 26, 1987 Agreement establishing the classification of car cleaner makes special provisions for the classification in rates of pay and restricts occupants from the performance of repair work. It makes no other exclusions. In all other aspects the classification is within all other provisions of the working Agreement, including preferential entitlements of furloughed employees to work at other points when men are needed. When Carrier decided to assign a car cleaner at Baldwin men were needed at Baldwin. Claimant should have been given preference to the work before Carrier was privileged to hire a new employee.


As reparations for the violation, the Claim will be sustained, as a single lump sum payment equal to a days' pay at the car cleaner rate of pay for each work day that Claimant was furloughed between May 2, and June 27, 1988.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1992.