

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12583
Docket No. 12303
93-2-91-2-92

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. That the Chicago & North Western Transportation Company violated the controlling agreement when, at the Oelwein Shop Facility, they hired Rich Wireman, Journeyman Electrician at 85% of full scale wages.
2. That Journeyman Electrician Rich Wireman be compensated for the difference in wages, resulting from his being hired at less than full scale wages (85%), for the period in which he was employed with the Company."

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 employe 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 hired as an Electrician by the Carrier on August 15, 1988 at its Oelwein Diesel Facility, Oelwein, Iowa. He was paid at the rate of 85% of full scale wages. On September 29, 1989, the Claimant was furloughed.

On November 13, 1989, a claim was filed on behalf of the Claimant in which the Organization contended that, at the time the Claimant was hired, he met all the requirements for a Journeyman pursuant to Rule 5 of the Agreement. Accordingly, the Organization asserts that the Carrier erred when it paid the Claimant only 85% of the Journeyman rate. On November 28, 1989, the claim was denied pursuant to Rule 28 (d). The Carrier in pertinent part stated:

"In order to clear this matter up we are willing to pay the difference in wages, of 15%, for the period he worked in accordance with Rule 28(D) of the controlling agreement. Rule 28(D) in part say: 'No monetary claim shall be allowed retroactively for more than sixty (60) days prior to the filing thereof'. I received this claim on November 15, 1989; Mr. Wireman was laid off at the close of shift on September 29, 1989. The 60 day time limit from the date of filing ran out on September 17, 1989. Under this rule we would owe Mr. Wireman Journeyman's wages for a period starting September 17, 1989 through September 29, 1989.

After a check of the time cards we found that Mr. Wireman worked 80 hours straight time. This would entitle Mr. Wireman to \$169.56."

In response, on December 29, 1989, the Organization argued that the claim should be sustained on the basis of that part of Rule 28(d) which reads:

"A claim may be filed at any time for an alleged continuing violation of any Agreement and all rights of the Claimant or Claimants involved thereby shall, under this Rule, be fully protected by the filling of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues."

It also contended in its appeal that the claim had been delayed because the Organization had been given assurances during telephone conversations and in conferences with the Carrier's officials that all monies owed would be forthcoming. The Organization also made note that there was no apprenticeship program at Oelwein Facility, that only Journeyman position were available, that the Claimant performed the full Journeyman duties of an armature winder and that the Shop Superintendent, in a phone conversation with the General

Chairman, acknowledged that he was aware of the Claimant's extensive electrical experiences before his employment with the Carrier.

On January 29, 1990, the Superintendent denied the claim stating "I can only go by when the claim was filed, and Rule 28(d) states in part 'No monetary claims shall be allowed retroactively for more than sixty (60) days prior to the filing thereof'."

Following further detailed correspondence, and noting particularly the Carrier's letter of November 7, 1990 and the Organization's reply of December 19, 1990, the claim was progressed to this Board.

After careful review of the lengthy record developed in the case, the Board concludes that no useful purpose would be served by further analysis of the information furnished by the parties. However, based on that data, the Board concludes that the claim should be sustained. When reaching that decision, the Board gave particular weight to the Organization's letters of December 29, 1989 and December 19, 1990. In our judgment, the Carrier did not substantively refute key assertions of the Organization on the property.

With respect to the damages, the Claimant is to be paid the difference between the amount he would have been paid had he been paid at the full Journeyman rate rather than 85% of the Journeyman wage for the period from September 17, 1989 until he was furloughed on September 29, 1989, in accordance with Rule 28 (d) of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.