

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12607
Docket No. 12536
93-2-92-2-38

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/Division TCU
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railroad Company and/or its corporate parent, the Norfolk Southern Corporation, violated the terms and conditions of the current Agreement on or about January 1, 1992, when they denied the request for transfer of Junior Student Mechanic A. L. Lawson from Hayne Car Shop, Spartanburg, South Carolina, to Hayne Junction, which is also located in Spartanburg, South Carolina, or Greenville Yard, Greenville, South Carolina. There were vacancies for Carmen at both places on January 1, 1991.
2. That accordingly, the Norfolk Southern Railroad Company and/or its parent, the Norfolk Southern Corporation, be ordered to provide the following relief: that Junior Student Carman A. L. Lawson be permitted to transfer to either Hayne Junction, Spartanburg, South Carolina or Greenville Yard at Greenville, South Carolina. Also, as this is a continuing time claim beginning January 1, 1991, that Junior Student Carman A. L. Lawson be paid the Student Carman rate that he would have been entitled to with his days of service presently standing or the full Carman's rate he would have been entitled to if he were set up as a Carman early."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claim of the Organization is that the Carrier violated the Agreement when it refused to allow a transfer of a Junior Student Carmen. In January, 1991, Claimant determined that Carmen vacancies existed in South Carolina Yards at Spartanburg and Greenville. The Claimant requested a transfer. By letter dated January 17, 1991, the Manager Hayne Car Shop denied the request due to production demands requiring Claimant's services.

The Organization argues that the Carrier's refusal violated several Agreement Rules, particularly Rule 17. The Organization maintains that such transfers were allowed in the past and cites examples. It maintains without rebuttal that Claimant was amply qualified and deserved the transfer.

This Board has fully reviewed the instant record and must deny the Claim. This is due to the fact that the Agreement Rules do not support the Organization's position. Rule 17 states in pertinent part:

- "(a) Employees covered by this agreement who are permitted to transfer to a point within the territory under jurisdiction of a different Shop Manager,...with the view of accepting a permanent transfer shall forfeit all seniority formerly held....The employee involved will accordingly establish seniority at the point to which transferred....
- (b) In the event a student mechanic employed pursuant to the provisions of Rule 38 is permitted to transfer under this rule, he will not, of course, establish seniority at the point to which transferred,...."

The Rule is clear as to granting the Carrier the fundamental right of issuing permission. Section (a) grants the Carrier the right to determine if an employee is "permitted to transfer." Section (b) involves seniority and days of training provided the employee if

the employee is "permitted to transfer." The Claimant is not granted an Agreement right to a transfer as herein maintained.

The Organization's claim must therefore be denied for lack of Rule support. The Organization has failed to identify any Agreement provision that guarantees the right of transfer. Rule 17 does not grant the right herein disputed. After full consideration of all the evidence, the Claim must fail for lack of Agreement support.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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

Dated at Chicago, Illinois, this 27th day of October 1993.