

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12738  
Docket No. 12574  
94-2-92-2-100

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 of 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 within twenty (20) days following July 9, 1991 when Junior Student Carman S. T. Riley was not assigned Job No. B1 at Bulls Gap, Tennessee at the end of the bid period.
2. That accordingly, the Norfolk Southern Railroad Company and/or its Parent, the Norfolk Southern Corporation, now be ordered to provide the following relief: that Junior Student Carman S. T. Riley be compensated at the Student Carman Rate of Pay beginning Thursday, August 1, 1991. This to continue each and every work day, Wednesday through Sunday, until he is placed on this job (B1-Bulls Gap, TN) as his regular assignment. This would also provide that if he is not placed on this job before completing the necessary number of days to be promoted to Carman, that at the completion of the required number of days that he then be paid at the Carmans' Rate of Pay."

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 background facts are not in dispute. Carman A. C. Cole vacated his position at Bulls Gap, Tennessee. By Bulletin No. 38 dated July 5, 1991, the Carrier advertised the open position. Claimant submitted his bid on July 8, 1991 for the advertised position and was denied by the Carrier. The Claim at bar is that the Carrier violated the Agreement when it failed to assign Claimant the position at Bulls Gap.

The Organization argues that Bulls Gap is within the combined Knoxville Territory under the supervision of the Master Mechanic. The Knoxville Territory includes Costner Shop, John Sevier Train Yard and Bulls Gap. Within the combined area with a common seniority any vacant position is advertised for bid at all three locations. The Claimant held the position of Junior Student Mechanic working at the Costner Shop and should have been awarded the position under Rule 20. The Organization points this Board to several Agreements and Rules as well as Second Division Award 7298 in support of its Claim to the Journeyman Carman vacancy.

The Carrier denies virtually all elements of the Organization's position. It argues that Bulls Gap is not a common seniority point within the Knoxville Territory. Therefore, applicants at the Costner Shop are required to transfer under Rule 16, which did not herein occur. The Carrier presents numerous Agreements and Rules supporting its contention that the Claimant lacked any right to the position at Bulls Gap due to the fact that he held the position of Junior Student Mechanic. Since Claimant had not yet completed the requisite 732 work days, he was confined by Agreement to the Costner Shops Facility.

This Board has carefully reviewed the instant case. The Organization has made several major arguments, including that all three locations of the Costner Shops, John Sevier Train Yard and Bulls Gap are filled due to a common seniority arrangement. We have reviewed this position and are not persuaded by the evidence of record. The Carrier presented the separate seniority lists of Knoxville and Bulls Gap. The Carrier noted on-property that Bulls Gap employees were listed on the Knoxville seniority list due to retained seniority under the Agreement. We do not find sufficient probative evidence presented by the Organization to prove a common seniority point.

Even if arguendo, it were a common seniority point, which we most assuredly do not find, this Board would still be unable to sustain the Claim. The Claimant holds the position of Junior Student Mechanic. We have carefully read all Agreements pertaining thereto and find that until Claimant attains Carman status, he holds rights under the Agreement which are limited almost exclusively to the Costner Shop. The provisions and Agreements relied upon by the Organization are not on point. Those provisions refer to Student Mechanics. On this property there exists not only Journeyman Carman and Student Mechanics but a separate Junior Student Mechanic Agreement. We find no language within that Agreement or Rule presented that supports the right of a Junior Student Mechanic to Carman vacancies. The Memorandum Agreement clearly limits applicability throughout its various sections. As example, Section 4 states in part:

"Employees performing service as Junior Student Mechanic will have the duties of filling vacancies and performing the work of BRC positions in the Costner Shops facility...."

Section 8 states in part that "This Agreement.... will apply only to Southern Railway in its Costner Shops facility." These limitations were negotiated and made explicit. While we find mention in the Memorandum governing Junior Student Mechanics limitations on their holding positions in the John Sevier Yard, there is no language whatsoever relating to Bulls Gap.

The Board finds no evidence that the Claimant had a contract right to a Journeyman vacancy. We find no Rule permitting a Junior Student Mechanic to be promoted to a Student Mechanic. The record and language of Agreements convinces us that Rules governing Student Mechanics are inapplicable under these instant facts. We find no Rule providing the Claimant with Agreement rights to bid for the Carman vacancy at Bulls Gap. The Claim is denied for lack of Agreement support indicating either that Claimant was qualified to bid or probative evidence of record that Carrier violated the Agreement.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.