

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13282

Docket No. 13244

98-2-97-2-15

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Springfield Terminal Railway Company violated the terms of our agreement, in particular Rule 12.4(b), when they arbitrarily failed to recognize the seniority of Carman L.R. Kitchin in the daily assignment of work.**
- 2. That accordingly, the Springfield Terminal Railway company be ordered to cease and desist from violating our agreement, thereby allowing Carman L.R. Kitchin to utilize his seniority as provided for in the aforementioned rule.”**

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 were given due notice of hearing thereon.

The only matter before this Board is the interpretation of Rule 12.4(b) which reads:

“Rule 12.4(b) ‘In the daily assignment of work to employees awarded positions under this rule, fitness ability and qualifications being equal, seniority will prevail.’”

On the day of the claim, Claimant and at least two other Carmen were assigned to specific duties in the so called “steel room.”

At about 7:30 A.M., the Supervisor instructed Claimant to go outside and sand the repair track which was icy. It was 15 degrees below zero.

Claimant protested the assignment, referred to Rule 12.4(b) which, he believed, gave him the right to use his seniority to choose the work assignment for the day, providing he had the fitness and ability equal to others to perform any of the specific tasks assigned.

The Carrier’s defense has been that Claimant did not have the fitness and ability equal to the fitness and ability of the junior employees to complete the tasks assigned to the junior employees on that day.

After reviewing the entire file, it is this Board’s opinion that Carrier’s defense cannot be accepted as applicable in this particular case. Claimant and the others started work at 7:00 A.M. Each, logically, was assigned specific work. At 7:30 A.M., Claimant was reassigned to do the outdoor salting and sanding. In other words, Claimant was assigned, at 7:00 A.M., work for which Carrier determined that his fitness and ability was equal to completing. The work he was reassigned to do, the salting and sanding, was work anyone could have done. It was not work for which he was uniquely qualified to perform, nor has there been any indication that Claimant completed his assigned work at 7:30 A.M., thus the assignment of salting and sanding would perhaps have been proper.

Under the circumstances outlined above, this Board finds that Carrier was in error when it ignored Claimant’s citing of Rule 12.4(b) in this instance.

Item 1 of the Statement of Claim is sustained; however, Item 2 is not. This Board's jurisdiction is limited solely to adjudicate claims and grievances based upon existing rules and/or agreements. It does not have the authority to issue "cease and desist" orders. Injunctive relief is not within its realm of authority.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 18th day of May 1998.