

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13645

Docket No. 13554

01-2-00-2-31

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/
(Transportation Communications International Union
(
(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 current agreement, in particular rule 12.4(a) when they arbitrarily failed to award vacant bulletin position to senior employee Jeremy W. Basford.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Jeremy W. Basford in the amount of eight (8) hours pay for each workday he was withheld from service effective March 16, 1999 and until he is properly restored to service, including any lost benefits and other compensation that may have accrued.”

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 Claimant holds a seniority date of December 1, 1997 on the Carman roster, on which he is identified as "Painter." He applied for a new position as Carman, which was advertised on March 8, 1999. As of March 15, 1999, the Claimant was refused the position, which was awarded to an employee listed on the roster as a Carman with seniority date of January 11, 1999; that is, 56 days' service with the Carrier on the date of the advertisement.

This dispute covers much of the same ground as that in Second Division Award 13644, but with some significant difference. The reasoning in Second Division Award 13644 is incorporated herein by reference. In particular, the Board repeats its conclusion, as argued by the Carrier, that service solely as a Painter does not automatically signify that an employee is qualified as a Carman.

The difference in this instance is that the Claimant was not on furlough (which brought into play the specific qualification requirement under Rule 27.2). Rather, he was actively employed, which instead makes Rule 12.4(a) applicable. Rule 12.4(a) states in pertinent part as follows:

"Vacant positions will be awarded to the senior qualified employee bidding for same, . . ."

The Carrier's basic argument, as in Second Division Award 13644 is that the Claimant was not "qualified." Here, however, the Organization argues that the junior employee was also not qualified, pointing to his brief service. In the on-property exchange of information, the Organization states:

"[The other employee] was newly hired on January 11, 1999 without any Carmen experience, and as of this date, the Carrier has not allowed him to cover a weekend job because he has not completed his training, administered by the Carrier, and they do not consider him qualified."

In a November 9, 1999 response, the Carrier stated:

"[The other employee] was qualified on AAR and FRA standards as well as air brake. . . . [He] is fully qualified on all aspects of Carmen's duty."

In its Submission, however, the Carrier notably makes no mention whatsoever of the other employee's qualifications or experience, concentrating solely on the Claimant's lack of qualification.

The Board concludes that the Carrier has not made a convincing case that the short-service employee meets the Rule 12.4(a) requirement, despite its on-property assertions. Based on this, the application of seniority is appropriate, and the Claimant was improperly denied the position.

There remains the question of remedy. The Organization seeks "eight hours pay for each day [the Claimant] was withheld from service." Assuming the Claimant was working (as a Painter) during the entire period, the appropriate remedy is the difference in pay, if any, between the Claimant's rate of pay and that he would have received if awarded the vacant position. The record does not indicate that the Claimant was furloughed during this period; if this is the case, then the eight hours daily remedy is appropriate.

Further, the Carrier states, without contradiction, that the position was abolished on July 26, 1999, so any monetary remedy would cease on that date.

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 6th day of August, 2001.