

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13701

Docket No. 13576

03-2-00-2-58

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 26 when they refused to allow Mark E. Lawrence his right to displace a junior Carman as an exercise of seniority.**
- 2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Mark E. Lawrence in the amount of eight (8) hours at the straight time rate for each workday he was denied his displacement rights. Additionally, the carrier be ordered to compensate Mark E. Lawrence for any overtime payments, vacation, insurance, holidays, personal leave days, sick leave days and any Railroad retirement benefits he may have lost as a result of the carrier's actions.”**

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 is designated on the 1999 roster as a "Painter" with a seniority date of January 17, 1994. On June 24, 1999 after his job was abolished in the Paint Shop, the Claimant attempted to displace S. R. Patrie, a Carman (according to the Organization) who hired out on March 4, 1999. The Claimant's attempted displacement of the junior employee Patrie was not allowed by the Carrier on the ground that the Claimant was not qualified as a Carman. This claim followed.

This is the same kind of dispute decided by the Board in Second Division Awards 13699 and 13700. The clear language of Rule 26.1 entitles employees displacement rights based on seniority and the clear language of Rule 12.5(a) entitles those employees "up to 20 working days in which to demonstrate their ability to competently perform the job." The Claimant was not given the opportunity to demonstrate his abilities as required by Rule 12.5(a). The Carrier therefore violated the clear language of the Agreement.

For a remedy, and as in Awards 13699 and 13700, the Claimant shall be allowed to displace into the Carman's position. If the Claimant can then demonstrate that he has the "ability to competently perform the job" as set forth in Rule the 12.5, Claimant shall then be entitled to be made whole.

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 31st day of January, 2003.