

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13898
Docket No. 13750
06-2-04-2-14

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: ((International Association of Machinists and
(Aerospace Workers
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

1. The Springfield Terminal Railway Company violated the controlling Agreement, effective June 1, 1995, as amended, particularly but not limited to Rule 11 when the Carrier failed to display Machinist G. D. Clark III on the 2002 Seniority Roster.
2. The claim should be sustained as written and the Carrier should be directed by the Board to place the Claimant at the appropriate position on the current Seniority Roster."

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, G. D. Clark III, was removed from the Carrier's 2002 Seniority Roster. The Claimant was injured while working and has since that time remained on disabled status.

The Organization argued that the above is a violation of Rule 11, that the Claimant should be on the roster, and that other similarly situated are on the roster. The Claimant must be put back on the roster so that, if he becomes able to work, he would have his rightful seniority. Under Rule 11 the Organization has the right to challenge. The Organization noted that there was no investigation when the Claimant was removed. The Claimant may wish to return to work and, therefore, the claim should be sustained.

The Carrier argued that this is not an equitable situation. The Carrier admitted that the Claimant was a good employee and a fifth generation railroader. However, the Board must stick to the Labor Agreement, and there was no rule violation proven. The argument by the Organization that there are others similarly situated is not in the record of this case. Just because the Claimant is listed as disabled does not mean that this is the same. The Carrier noted that there is a FELA claim pending. It is the Organization's job to prove and justify based on the record. Based on the above the claim must be denied.

Upon complete review of the record, the Board finds no violation of Rule 11. There is no showing that the Claimant would be able to come back to work or would even want to come back to work. The Board also notes that the Claimant received a large court ordered award which was based on the fact that "The Plaintiff has been incapacitated and prevented from engaging in his employment and that the Plaintiff will continue to be so incapacitated in the future." Based on the lack of evidence of a rule violation and the permanent nature of the Claimant's disability and his own arguments at trial, the Board will deny the claim.

AWARD

Claim denied.

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ORDER

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 7th day of June 2006.