

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13969
Docket No. 13860
08-2-NRAB-00002-080013**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 26.1, when they denied Carman Oscar Gerry (Portland, ME) his right to exercise his seniority in displacing a junior employee at Lawrence, MA.**
- 2. That, accordingly, the Springfield Terminal Railway be required to compensate Carman Oscar Gerry in the amount of eight (8) hours at the straight time rate of pay for each day that he is withheld from service by the Carrier effective March 5, 2007.”**

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.

It is the Organization's position that the Carrier violated Rule 26.1 on March 5, 2007 when it would not allow the Claimant to displace a junior employee on a Carman position at Lawrence, MA because he did not possess a hoisting license. It argued that Claimant was regularly employed as a Carman in the state of Maine where he was furloughed and where there is no requirement to have a hoisting license. It also argued that Claimant had no knowledge of the Massachusetts state requirement and it should not be held against him as he has been driving the road truck for over two years without any problem, therefore, he should be allowed to make the displacement and be compensated as requested.

It is the position of the Carrier that it did not violate Rule 26.1. It argued that the State of Massachusetts requires all employees that will be operating a crane in that state to hold a hoisting license and because the Claimant did not have that license it could not allow him to displace a junior employee who had a license. The Carrier maintains that without this license, Claimant was unable to perform all the duties of a Carman in Lawrence and was not qualified in accordance with Rule 12.5(a). It stated that Claimant should have been aware of the licensing requirements as all the job postings in the Car Department list that requirement for Massachusetts' Carman positions. Furthermore, it argued that Claimant should have made an effort to acquire any required licenses before he was faced with being disqualified or furloughed for lack of qualification. It concluded by stating that when Claimant holds a Massachusetts Hoisting License, he will be able to exercise his seniority rights in that state, but in the meantime the claim should be denied.

The Board has thoroughly reviewed the record and finds there is no dispute between the parties that on March 5, 2007, when Claimant attempted to displace a junior Carman at Lawrence, MA, he did not possess the required Massachusetts Hoisting License. Rule 12.5(a) which is relevant to this dispute states the following:

"Employees, after being awarded bulletined positions or exercising displacement rights, will be allowed up to 20 working days in which to demonstrate their ability to competently perform the job. Employees will be given full cooperation of supervisors and trainers in their efforts to qualify for positions."

In accordance with Rule 12.5(a) Claimant was required to possess the requisite hoisting license after which he was entitled to the opportunity to demonstrate his ability to competently perform the job. Because the Claimant did not have the necessary state license he could not meet the first hurdle for displacement. If he had possessed that license he could have displaced and then been allowed the designated time to demonstrate his ability. Absent the state required license the Board finds and holds that the claim must be denied.

AWARD

Claim denied.

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 23rd day of October 2008.