

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13995
Docket No. 13879
09-2-NRAB-00002-080029**

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

**(Brotherhood 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 failed to allow Carmen B. Bertleson and C. Scribner to displace a junior employee on the Springfield Terminal Railway Carman System Seniority Roster.**
- 2. Accordingly, the Springfield Terminal Railway Company be required to compensate Carmen B. Bertleson and C. Scribner in the amount of eight (8) hours straight time for each day that the junior employee holds the positions. In addition, Carmen Bertleson and Scribner be compensated for each day towards their 732 days that they would receive had they stayed working and all the Health and Welfare Benefits they should have accumulated as a result of this failure.”**

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 April 2, 2007, or shortly thereafter, when it would not allow either Claimant to displace a junior employee on Carman Position Nos. 49 or 54 at Waterville, Maine, because they did not possess a CDL Class A license. It argued that there was no need for three positions to be required to possess a CDL/A license because there was only one truck that has a Class A requirement which, according to it, substantiates that the Carrier had attempted to build a fence around the two junior employees to keep them from being displaced. It requested that the claim be sustained as presented.

It is the position of the Carrier that it did not violate Rule 26.1. It argued that all New England states and various other states as far away as Florida and Arkansas that it transports company materials, supplies, machinery and equipment require its drivers to have a CDL/A License. Because the Claimants did not have that license it could not allow them to displace a junior employee who had a license. The Carrier argued that without the required license, the Claimants were unable to perform all duties of Position Nos. 49 or 54 in Waterville and were not qualified in accordance with Rule 12.5 (a). It argued that it had not built a fence around the two junior employees to keep them from being displaced. It further argued that the Organization was incorrect when it asserted that there is only one truck at Waterville, because it actually varies in number and three positions with the CDL/A requirement also assures that each driver can plan on being able to take his scheduled rest days without there being any interruption in the Carrier's trucking operation. It further stated that the Claimants showed no interest in the aforementioned positions until they were faced with being furloughed, for lack of the required license and that at least one other employee had previously obtained a CDL/A License while not holding a job that required it so that he could displace on any position with that requirement if he needed to. It concluded by arguing that the Claimants should have had the same foresight and noted that when the Claimants hold the requisite CDL/A License, they will be able to exercise their seniority rights on any position with that requirement that becomes available, but in the meantime the claim should be denied.

The Board thoroughly reviewed the record and finds that on the date Claimants attempted to exercise their displacements they did not possess the required CDL/A License. With the exception of the Claimants, this is identical to a claim adjudicated in Second Division Award 13992. The arguments and positions taken by both parties in the aforementioned Award are the same as in the instant case except for the allegation made by the Organization that the Carrier attempted to build a fence around the two junior employees to shield them from displacement. That argument does not change the result in this instance because it does not effectively negate the fact that the record indicates that at various times there were multiple trucks at the facility and three qualified drivers were needed to cover rest days and all other vacancies. Therefore, as previously stated in Award 13992 the Board finds and holds for the same reasoning expressed in that Award that the instant 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 11th day of February 2009.