

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( System Federation No. 16, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Detroit, Toledo and Ironton Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the applicable provisions of the Current Working Agreement in consistence with Article III of Agreement dated June 15, 1953, by calling Carman Helper R. D. Richards from furloughed status out-of-turn and subsequently allowing him to accumulate time under the 1040 days carmen upgrading program.
2. That Carrier violated Rule 30 $\frac{1}{2}$ , Section 1, paragraph (a) during the progression of the claim.
3. That accordingly, Carrier be ordered to compensate furloughed Carmen Helpers D. Clark, R. Clark and L. Cook for the time for the hours worked by R. D. Richards in a supervisory capacity.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

In reference to Part 1 of the Claim of Employees, we find that the Carrier did violate the Agreement by allowing Mr. R. D. Richards to accumulate time under the 1040 day Carmen upgrading program. We find no violation in the Carrier calling Mr. Richards from furloughed status out-of-turn, where he was called to occupy a supervisory position. The Carrier is ordered to correct the Agreement violation and is referred to Award No. 7498 of this Division, involving the same parties and a similar matter.

We find no violation of Rule 30  $\frac{1}{2}$ , Section 1, paragraph (a) under the narrow facts of the instant case where the Claim submitted to

Superintendent Car Department by letter of March 12, 1975, beyond the statement of an Agreement violation in Mr. Richards being allowed to accumulate days in the 1040 day Upgraded Carmen program while working the Supervisor's position, was totally ambiguous as to the remedy sought by the Claimants.

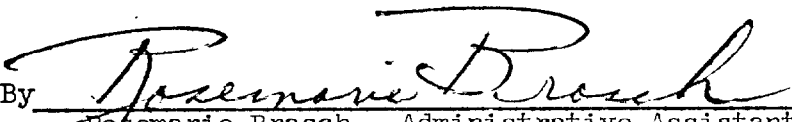
The Claim before this Board for compensation for the three Claimants is denied since Mr. Richard's working as a Supervisor did not deprive the Claimants of any work opportunities.

A W A R D

Sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.