

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 8211  
Docket No. 8099  
2-CR-CM-'79

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: ( System Federation No. 109, Railway Employees'  
( Department, A. F. of L. - C. I. O  
( (Carmen)  
( Consolidated Rail Corporation

Dispute: Claim of Employes:

(a) That the Carrier violated the controlling Agreement when on August 19, 1977, Carman James P. Stankiewicz was not advised by Chief Clerk, Miss Dorothy Paul, that two junior employees (Welder Joseph L. Biscanti, Jr. and Welder Ronald S. Smutek) were both working as Car Repairers on August 15, 1977, and not as welders as she had them listed.

(b) That accordingly, the Carrier be ordered to compensate Car Repairer James P. Stankiewicz eight hours pay at the pro-rata rate of pay for the date of August 22, 1977, and each and every working day thereafter up to and including September 20, 1977.

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.

Claimant, James P. Stankiewicz, was working as a car repairer at Reading, Pennsylvania, when his job was abolished on August 12, 1977, due to a general reduction in force. In accordance with contractual entitlements he utilized his seniority to displace a junior employe in a painter's position. Claimant avers that at the time, August 15, 1977, he could not find his organizational representatives as they were on vacation and he therefore inquired of a chief clerk regarding positions which his seniority might entitle him to fill. He was informed by the clerk that carmen junior to him working on the day shift were welders or painters. Claimant elected to displace as a painter. After five days in that position, he developed chest pains and was advised by the

Company physician as well as his own doctor that he should not perform spray painting work as it appeared to be irritating an upper respiratory infection.

Mr. Stankiewicz performed no work subsequent to this date, August 19, 1977, until September 1, 1977, when he was assigned a temporary position of car repairer. He worked that position through September 9, when he was displaced by a senior car repairer. He now claims displacement pay as outlined in the statement of claim for the period August 22, 1977, up to and including September 20, when he would have been displaced by a more senior employe.

The record indicates that the Claimant was familiar with the exercise of seniority as is evidenced by his movement through the ranks from date of hire to the present. Further, he had a copy of the seniority roster and was familiar with it. As a matter of fact, he submitted his copy with the claim. There is no evidence in the record that the Company denied him his seniority rights. He simply states that a clerk gave him wrong information when he exercised his seniority on August 15, 1977. The roster of seniority is relatively small and it is difficult to believe that the Claimant was not aware of the work being performed in the shops. Further, it is interesting to note that he made no effort to exercise seniority when he was displaced on September 9, 1977, but chose furlough status.

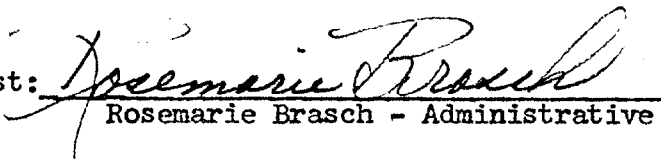
Based on the entire record the Company did not deny the seniority rights of the Claimant during the period of time under consideration. Rather, the Claimant failed to exercise those rights properly.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of December 1979.