

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers  
(  
( Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Laborer Robert Pandow was unjustly held out of service from September 5, 1979 to October 8, 1979.
2. That accordingly, the Elgin, Joliet and Eastern Railway Company be ordered to compensate Laborer Robert Pandow for all time lost between September 5, 1979 and October 8, 1979.

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 waived right of appearance at hearing thereon.

Claimant was a Laborer who was assigned to the temporary vacancy of Fuel Truck Driver on August 31, 1979. This was done after the position had been bulletined, and -- with no bids received -- the Claimant was assigned to the vacancy as the "youngest qualified employee". It was shortly thereafter made known that the Claimant's Class C driver's license, required to drive the fuel truck, had expired, and he had taken no steps to renew it.

As a result of this, the Carrier suspended the Claimant on September 5, 1979, "until such a time as you obtain a valid Class C driver's license". On September 24th, the employee holding the position on a permanent basis returned to work, thus ending the temporary vacancy. The Carrier some time later notified the Claimant to return to work, which he did on October 8th.

The Carrier states without contradiction that the holding or obtaining of a Class C driver's license is a necessary qualification for the position of Laborer, in that such employees are called upon at times to drive the fuel truck.

The Organization argues, first, that there were two employees junior to the Claimant who were not placed in service on the fuel truck in place of the Claimant. The Organization also argues that the Claimant was entitled to an investigative hearing prior to being "disciplined" by being removed from service.

The two junior employes had been hired only one day and five days, respectively, prior to the time the Claimant was temporarily removed from service. The Board agrees that such newly hired employes in probationary status need not have been considered as "qualified" employes for the purpose of assigning them at that time to the fuel truck.

Nor does the Board find a "disciplinary" action in the Carrier's failure to utilize the Claimant's services on the fuel truck while his Class C license had been allowed to lapse.

The situation changed, nevertheless, on September 24, when the permanently assigned driver returned to work. At that point, the Claimant was no longer the junior (non-driving) Laborer, and from then on there was no basis to withhold him from service, except if the Carrier had wished then to impose discipline, which would in turn have required an investigative hearing.

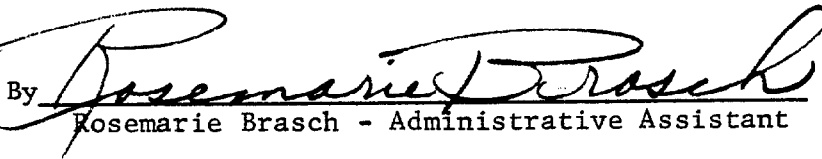
Based on this reasoning, the Board finds that the Claimant was held from service for an excessive period and beyond that caused by his failure to have a currently valid Class C license.

A W A R D

Claim sustained to the extent that the Claimant shall be made whole to the extent provided in Rule 33 (b) for the period between September 24, 1979 and his return on October 8, 1979.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of June, 1982.