

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10009
Docket No. 9997
2-SOU-CM-'84

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Southern Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated Rule 26 of the current Agreement when all Carmen affected by Bulletin No. 79 were not allowed a displacement right in accordance with the provisions of Rule 26.
2. That the Carrier be ordered to allow all Carmen affected by Bulletin No. 79 who were not given proper displacement rights and all Carmen affected by future Bulletins be allowed to displace any employee their junior in accordance with Rule 26.

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 employes 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.

The Carrier maintains a freight car repair facility at Knoxville, Tennessee, known as The Coster Shop. On or about August 26, 1981, the positions of certain carmen were abolished. In accordance with the rules and practices at the shop, the affected employes were required to displace other carmen in order to hold a position. The Employes did accordingly advise Carrier of the carmen whom they wished to displace, but their choices were denied by the Carrier.

The applicable provision of the controlling agreement is Rule 26. Rule 26 reads in pertinent part:

"Rule 26 (a) When it becomes necessary to adjust the forces for any reason the position or positions to be made vacant shall be abolished as provided in Rule 24.

(b) Any employee affected thereby, shall, if qualified (reasonable trial to be afforded to determine qualifications) be privileged to displace any employee his junior in point of service on his own or any other shift or department to which he may desire to go.

(c) When forces are restored, employees shall be recalled as provided in Rule 24."

The Employees contend that:

1. The Carrier violated the above cited provisions of the controlling agreement when they did not allow these displaced employees to, in turn, displace the junior employee of their choice.

2. That the employee displacing another employee will also assume the duties which that employee was performing at that time.

The Carrier contends that:

1. That this case is merely a continuation of a previous dispute which was not processed to a final decision at this Board.

2. That accordingly this case is barred from consideration by this Board and must be dismissed.

3. That Carrier's action in the instant case was in full compliance with Rule 26.

Both parties cite Board awards in alleged support of their positions. We shall deal with the Carrier's contentions first.

We do not agree that this claim is merely a continuation of a former dispute. An occurrence happening at another time or place is not the same occurrence even though it may be a similar occurrence. Nor do we agree that simply because another like dispute was not processed to a conclusion at this Board that all further similar claims must be forever barred. We find that this case is properly before this Board.

As provided in Rule 26(b), an affected employee has the right to displace any employee his junior at the point of service. There is no exception to this. Therefore, when the Carrier did not allow these displaced employees to displace the junior employee of their choice, the Carrier was in violation of Rule 26(b).

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The Employes' contention number 2 that any employe displacing another employe will assume the duties which that employe was performing at the time is nowhere stated in the agreement. This Board cannot read into the agreement something that is not there. A legion of awards from all Divisions of this Board has so held. We find, therefore, that while Carrier was in violation of the agreement by not allowing these displaced employes to displace the junior employe of their choice, the Carrier was not in violation of the agreement when the Carrier did not allow these Claimants to assume those specific duties.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.