Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10136
Docket No. 10002
2-B&O-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
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That Carrier violated the controlling Agreement, specifically, Article IV of the August 21, 1954 Agreement, effective November 1, 1954, and/or Rule 24 1/2 of the controlling Agreement, when as of the date of June 29, 1981 Claimant was denied his contractual rights under the provisions of Article IV, (Rule 24 1/2) to perform compensated service at Clarksburg, West Virginia; Claimant having complied with all provisions of the above referred to Rule. Instead, Carrier arbitrarily allowed a Junior employe to bypass Claimant to perform work at Clarksburg, W. Va., thus causing Claimant monetary injury to the extent claimed.

2. That Carrier be ordered, accordingly, to compensate Claimant for all loses (sic) incurred account this outright violation of Claimant's controlling Agreement, as per the initial claim, that being, allowing Claimant the current Carmen rate of pay for all dates of occurrence, plus all or any calls made after the dates of June 29, June 30 and July 3, 1981, concerning this claim.

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 waived right of appearance at hearing thereon.

The Claimant involved in the instant case is a carman employed by the Carrier at Carrier's Fairmont, West Virginia Car Shop. Apparently he held seniority at no other point. He was furloughed from the Fairmont Car Shop on August 15, 1979.

Article IV of the August 21, 1954 agreement reads in part:

"1. The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 here of their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled.

* * *

2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work.

* * *

3. Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service."

Claimant alleges that under the provisions of this rule that he had "signed up" at the Clarksburg Car Shop sometime in late 1979 or early 1980, and that he was called and did work there on Thursday, September 4, 1980 and continuing through September 26, 1980, that he took a car inspector's test and passed it. That he again worked at Clarksburg November 24 through November 28 and February 2 through February 10, 1981 after which he was furloughed again. He alleges that on February 12, 1981, he again signed up for work at Clarksburg. No proof is presented in support of these contentions.

Carrier contends that they did not receive notice of the Claimant's desire to work at Clarksburg and further that the said notice did not comply with the notice requirements of paragraph 2 of Article 4 as it was sent to the Local Chairman at Fairmont instead of the Local Chairman at Clarksburg.

In regards to the contentions of both parties, we find nothing in Article 4 designating a specific Local Chairman to whom claimants must send copies of their letters and certainly Carrier cannot so designate any more than the Employees can designate which Carrier official that they must send copies of their letters to. Claimant presents no proof that he had previously worked at Clarksburg, but since Carrier has not denied it we must assume that he did. The only copy of a request from the Claimant for other work appearing in the record and made prior to the incident on which this claim is based is in Carrier's Exhibit D and does not even mention Clarksburg, it does mention Fairmont and appears to be a request to work at that point. Both the Carrier's and the Employee's Exhibit C is a copy of a letter from the Claimant to Carrier's Supervisor M. W. Phebus and reads in part:

"I desire to be considered for work at the Clarksburg shop on any shift or any time."

Carrier contends that they received that letter only as part of the claim.

We note further that there appears to have been only one vacancy at Clarksburg and that vacancy had been filled, although by a junior employee, on date of June 19, 1981. Claimant's application to work at Clarksburg (both the Employee's and Carrier's Exhibit C) is dated June 29, 1981, or ten days after the vacancy had been filled and no longer existed. And also there remains the fact that Carrier contends that they did not receive that application except as part of the claim.

Since the only application from the Claimant to work at Clarksburg that appears in the record is dated ten days after the position had been filled, and since there appears to have been only one vacancy at the time, we must rule that the Claimant's application was untimely and must deny the claim. Having made this decision there is no need to rule on any of these unproven contentions by either party.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 31st day of October 1984.