

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employees:

1. That the Western Maryland Railroad Company violated the terms and/or provisions of the controlling Agreement, when on the date of December 13, 1982, and continuing therefrom, Carrier arbitrarily permitted a junior employe to work in the capacity of Carman and placed Claimant herein, Carman W. J. Currence, in furloughed status, at Elkins, West Virginia, in violation of Claimant's seniority rights, as per Rule 109 of the controlling agreement.

2. That Carrier be ordered to compensate Claimant for all time lost as a result of such violation, that he be made completely whole account such infringement upon his seniority rights from the date of December 13, 1982, all time the junior Carman worked in his stead, until resolved, five (5) days per week, eight (8) hours per day, as per Rule 1, of the controlling Agreement, at the Carmen's straight time rate of pay.

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 record shows that effective December 9, 1982, several Carmen positions at Carrier's facility at Elkins, West Virginia, were abolished, resulting in Claimant being placed in a furlough status. Claimant, who previously held a Carman Welder position, sought to exercise his seniority rights and displace a junior Employe holding a position of Carman-Welder and Wreck Crane Operator. The Carrier did not consider Claimant a qualified Wreck Crane Operator and denied his request to displace the junior Employe.

Rule 109, cited by the Organization, reads:

"EXERCISE OF SENIORITY.

"Rule 109.

"When the duties of any bulletined position are changed or conditions develop so that the employee affected cannot satisfactorily perform the assigned work, he shall by mutual agreement, be permitted to exercise his seniority rights over junior employees. Employees affected may exercise their seniority rights in the same manner."

We do not consider that Rule 109 has application in our present dispute. It relates to changes made in the duties of a position to the extent that the incumbent of such can no longer satisfactorily perform the assigned work. No changes were made in the Claimant's position. It was abolished.

No contention is made that Claimant was qualified to operate the wreck crane. The contention is made, however, that Carrier should have furloughed the junior Employee working the Carman Welder and Wreck Crane Operator position and called that Employee for service only when a Wreck Crane Operator was needed. We have been referred to no rule providing for such handling. The Board has issued numerous awards that the Carrier is the judge of an Employee's fitness and ability. However, as indicated heretofore, there is no contention in our present dispute that Claimant was a qualified Wreck Crane Operator. For an Employee to exercise seniority to a position, he must be qualified for the duties of such position. See Awards Nos. 6897 and 6760 involving somewhat similar circumstances as involved herein.

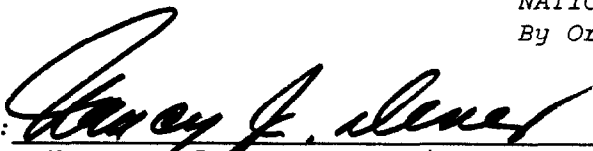
We find no violation of the Agreement and the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.