

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

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(Kansas City Southern Railway Company

Dispute: Claim of Employees:

Claim in behalf of Machinist Kenneth J. Martin commencing August 18, 1982 for eight (8) hours at the pro rata rate of pay each day of his former assignment from 8:00 AM to 4:00 PM, Wednesday through Sunday, due to Carrier's violation of Rules 21, 22, 24, 29, and 33 of the controlling Agreement. Claim is continuing.

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, Machinist Kenneth J. Martin, is a Machinist holding seniority at the Carrier's Baton Rouge, Louisiana, facility dated August 19, 1980. On December 26, 1981, he was placed on furlough. On May 19, 1982, the Claimant began work at the Carrier's Shreveport, Louisiana, Shop. On June 15, 1982, the Claimant was advised his application for employment in the Shreveport Diesel Shop had been disapproved.

The Organization asserted the Claimant inquired about work at Shreveport, and Superintendent of Locomotives D. R. Johnson notified him work was available. It is the Organization's position that Rule 22 governs, and it states:

"Furloughed Men, Use of

(a) While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company; seniority to govern."

The Carrier denied the Claimant was transferred to Shreveport and stated the Claimant was a new employe subject to Rule 33, which states in pertinent part:

"(d) Shopmen will not be dismissed after the expiration of sixty (60) days from the date entering service on account of application not approved"

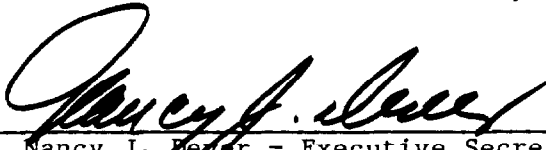
The problem with the record before the Board is the absence of probative evidence. All we have before us is the allegation the Claimant was transferred from Baton Rouge to Shreveport. The Carrier denies this event. In such cases, the Board emphasizes that the burden of proof lies with the Organization. With no supporting facts, we are unable to resolve the applicability of Rule 22. There is simply insufficient evidence to support a sustaining award.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1986.