

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall 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 Employees:

1. That the Carrier violated the controlling Agreement when on the date of January 3, 1983, they recalled a junior man to service from furloughed status, in lieu of calling Claimant Carman R. A. Smith with superior seniority, allowed the junior employee to work on the above date, while Carman Smith, the senior employee remained in furloughed status, in violation of Rule 24 (g) of the controlling Agreement.

2. That accordingly, Carrier be ordered to compensate Claimant R. A. Smith for all time lost as a result of such violation of his seniority rights, eight (8) hours' pay at the straight time rate of pay on the date of January 3, 1983.

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 employees 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.

This dispute centers on the Claimant's contention that he should have been called from furlough ahead of a Carman junior to him in seniority who was also on furlough.

The Organization cites a portion of Rule 24(g) in support of its position that the Claimant is entitled to the payment sought by presentation and appeal of the Claim. The cited Rule reads:

"In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within 15 days. . . "

If practices in previous instances of the nature involved here were different from the procedures followed in the recall of the Carmen in this dispute, such instances were not cited.

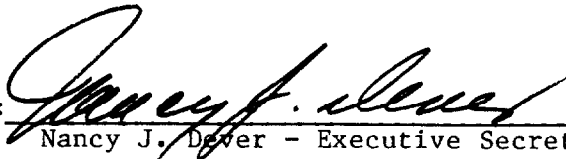
In this type of Claim, the burden is on the petitioner to prove a violation by presentation of probative and substantial evidence. That requirement was not met.

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 28th day of May 1986.