

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Philadelphia, Bethlehem and New England Railroad  
( Company

Dispute: Claim of Employees:

1. That the Philadelphia, Bethlehem and New England Railroad Company violated the controlling agreement when they failed to advertise two new positions of Carmen Welder with Headquarters, Shimersville fueling station.
2. That accordingly the Carrier be ordered to advertise two positions of Carmen Welder in accordance with Rule 15.
3. That Carmen Richard Thatcher and Neal Setcer be additionally compensated in the amount of the difference in rate of pay between that of a Carman and Carman Welder, commencing August 29 and September 7, 1983, and that the two senior furloughed Carmen, S. Marenychick and G. Schubert, as of August 29 and September 7, 1983, be compensated for each and every day that they were withheld from service and denied the right to fill Carmen vacancies created by the advancement of two Carmen to the positions of Carmen Welders, and be made whole for any and all other benefits which would accrue to them during this period of time.

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.

This Claim was triggered after the Carrier, in September 1983, recalled two junior Carman Employees, who previously had worked exclusively as Carman Welders from 1981 until July 12, 1982, to again fill positions of Carman Welder.

The Organization asserts that the Carrier created new positions and thus the jobs should have been bulletined pursuant to Rule 15 of the Agreement. Moreover, it contends that Carrier also violated Rule 16 of the Agreement because the most senior furloughed Employees were not returned to service and given an opportunity to demonstrate their ability to perform the duties of Carman Welder.

The Board notes that, while a number of other contentions have been advanced, including, for example, the Carrier's obligation to train its Employees, the threshold issue is whether the Carman positions, which required a qualified Welder, should have been bulletined by the Carrier pursuant to Rule 15 of the Agreement before placing the junior Carman in them. The record indicates that after the Organization filed its Claim, the Carrier did advertise three Carman Welder assignments on September 23, 1983. Two assignments were awarded to the junior Employees previously recalled and one remaining position was awarded to another Employee. All of those who were placed were qualified Welders.

The Board finds that the Carrier violated Rule 15 of the Agreement at the time that it recalled the junior Carman for positions that required Welder qualifications. This violation continued until September 23, 1983, when Carrier bulletined the positions.

While it cannot be disputed that the Carrier has the well-established right to judge employee fitness and ability for a position, it cannot circumvent clear-cut Agreement provisions on that basis. The Carrier, in effect, has acknowledged by its action of bulletining the position on September 23, 1983, that it had earlier erred. Essentially, applying the particular facts of this dispute to the controlling rules, the Carrier did not have the right to pick and choose Employees from the Seniority Roster. Certainly, after it advertised the positions, it rightfully exercised its right to determine qualifications and make selections.

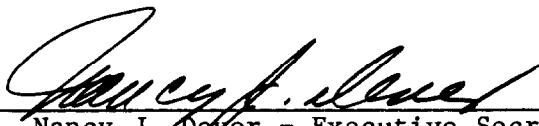
In summary, while the Carrier cannot violate the Agreement with impunity, it is apparent here that the junior employees, earlier recalled by the Carrier, were properly awarded the positions at issue after they were advertised. For all practical purposes, they were not damaged. The record does not indicate that the four Claimants bid for the jobs once they were advertised. On this basis, we do not find that compensation is due the Claimants here.

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 25th day of June 1986.