

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad Company violated Rule 13 of our Current Agreement when they failed to fill thirteen (13) carmen helper positions properly.

2. That, accordingly, the Burlington Northern Railroad Company be ordered to compensate St. Cloud Carmen Michael Rassier, David Fisher, Dennis Stulz, Gary Hollenkamp, Howard Marken, and James Fasen in the amount of eight (8) hours for each work day at carman helpers rate of pay commencing July 19, 1982 and continuing until they are properly assigned the positions at St. Cloud and made whole.

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 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.

On June 24, 1982, the Carrier bulletined eleven Carmen Helper jobs. The same day, it sent out letters of recall to eleven furloughed Carmen Helpers. Apparently, three of the eleven reported to work on July 8 and were offered buy-offs. Two accepted, and the remaining Carmen Helper was awarded a job per Bulletin 7-28A. On July 9, 1982, the Carrier abolished thirty-one Carmen positions at its St. Cloud Shop. On July 13, the Carrier notified thirteen of the Carmen furloughed, by Bulletin 13-82, that thirteen Carmen Helper positions were available to them due to the fact their merger protection guarantee was that of Carmen Helper. These thirteen employees filled the ten positions left from Bulletin 7-82 and three others bulletined July 17, 1982.

The Organization has advanced this Claim contending the six Claimants had placed timely bids on positions in Bulletin 14-82 (the three additional Carmen Helper positions). According to the Organization, the Carrier has violated Rule 13(d) and (e), set forth below:

"(d) Positions or vacancies bulletined pursuant to paragraph (b) hereof will be awarded to the senior qualified applicant within ten (10) calendar days after the bulletin period expires. A standard bulletin will be posted immediately announcing the name of the successful applicant for a bulletined position or vacancy.

(e) In the event there are no applicants for a position or vacancy bulletined pursuant to paragraph (b), such position or vacancy will then be filled by using the senior qualified furloughed employee on the seniority district involved."

The Organization argues the Claimants bid on Bulletin 14-82 and should have been awarded the positions per Rule 13. The Organization further contends the Claimants were qualified to fill these positions since they are Masters of the craft and qualified to fill positions as Carmen Helpers.

It is undisputed that neither the Claimants nor thirteen Carmen placed on the Helper position list held seniority as Carmen Helpers. We further note that Rule 26(e) provides in pertinent part that seniority shall be confined to "...the craft, class and seniority district at which employed." Rule 26(g) further provides that "...in the carmen's craft, district rosters will be established for carmen mechanics, helpers, apprentices and coach cleaners." From the above, it is evident that Carmen and Helpers' Seniority Rosters are separate and distinct.

This Board agrees with the Carrier's contention that Rules 13(d) and (e) require the calling of employees who have seniority as Carmen Helpers. The Rules do not require the Carrier to call employees for Helper positions who have seniority as Carmen. The fact that employees who did not have Carmen Helper seniority, but were merger protected, were assigned to the positions does not act to support the Organization's claim the Claimants were not called in accordance with their Carmen seniority. The Organization has failed to sustain its burden of proof and has not shown by a preponderance of probative evidence that the Claimants have a right to work as Carmen Helpers based upon their seniority as Carmen.

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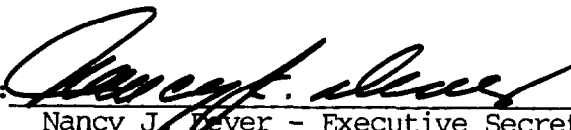
Award No. 11146
Docket No. 10408
2-BN-CM-'87

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 11th day of February 1987.