

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Birmingham Southern Railroad Company

Dispute: Claim of Employees:

1. That the Birmingham Southern Railroad Company, hereinafter referred to as the Carrier, was in violation of the Agreement, particularly, Article 13 paragraph (b), when on June 30 and July 1, 1984, other than the senior unassigned car inspector was assigned to fill a vacancy at Birmingham, Alabama and a junior employee was assigned to fill said vacancy.

2. And consequently, the Carrier should be ordered to compensate Carman D. Gentry, hereinafter referred to as the Claimant, for sixteen (16) hours at the rate of straight time as a result of said violation.

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.

Claimant is employed as a Carman by the Carrier at its Ensley, Alabama Car Shops. At about Noon on Friday, June 29, 1984, Carrier determined that there would be a temporary vacancy on the No. 4 Truck Job that weekend, June 30 and July 1, 1984. At about 1:00 P.M. that day, Carrier attempted to contact Claimant, the senior unassigned Car Inspector, by phone; there was no answer. The vacancy then was filled by a junior Carman. The Organization subsequently filed a Claim on Claimant's behalf, charging that the Carrier violated Article 13(b) of the current Agreement, which provides, in part:

"(b) Car Inspector Vacancies will be filled as follows:

* * * *

Temporary Vacancies: Temporary vacancies will be filled by the senior unassigned car inspector requesting to fill such vacancy until job is bid."

The Organization seeks compensation for the Claimant in the amount of sixteen (16) hours' pay at the straight-time rate.

The Organization asserts that because Claimant was the senior unassigned Car Inspector who requested to fill vacancies such as the one at issue, then under Article 13(b), Claimant should have been allowed to fill the vacancy on June 30 and July 1, 1984. The Organization points out that Carrier tried to call Claimant twenty-six hours before the start of the vacancy. The Organization asserts that it is unreasonable to assume so far in advance that an employee will be unavailable to fill a vacancy.

Moreover, the Organization asserts that Carrier did not make an honest effort to assign the vacancy to Claimant. Claimant called the Car Shop Foreman at 2:30 P.M. on June 29, and worked the night of June 29. The Organization asserts that Claimant could have been notified of the vacancy at either time, but Carrier did not notify Claimant. The Organization contends that Carrier violated the Agreement, and the Claim should be sustained.

The Carrier contends that it made a reasonable effort to utilize Claimant on the dates at issue. Carrier asserts that it attempted to reach Claimant in accordance with Article 13(b). When there was no answer after the phone rang about ten times, Carrier continued on its call-out list in seniority order until the vacancy was filled. The Carrier points out that the Organization does not dispute that Carrier made a call to the Claimant. Moreover, Claimant admitted that he may not have been at home when the call was made.

The Carrier also contends that no one was on the property after the close of business at 3:00 P.M. on June 29 to make calls to fill the vacancy. Carrier asserts that it could not have waited any longer to fill the vacancy. Moreover, Carrier was calling out employees who were not required to hold themselves in readiness to fill vacancies; Carrier therefore was not required to make special efforts to locate a particular employee.

The Carrier also argues that at 2:30 P.M. on June 29, Claimant called the Shop Track Foreman about an unrelated matter. The Shop Track Foreman is not responsible for filling vacancies, so he had no reason to ask Claimant whether he was working that weekend. The Carrier points out that vacancies occur randomly, so the employees bear the burden of making themselves available. The Carrier asserts that it is common practice for employees to contact

the Carrier to indicate their availability should a vacancy arise; Claimant did not try to contact Carrier, nor did he indicate his availability during his conversation with the Shop Track Foreman. The Carrier therefore argues that it reasonably concluded that Claimant was not available.

Finally, the Carrier asserts that it complied with Article 13(b) in filling the temporary vacancy. The Carrier contends that it tried to call all of the senior Carman before filling the vacancy with a junior Carman. The Carrier argues that there is no provision governing the procedure to be followed if an employee cannot be reached. The Carrier therefore argues that the Claim should be denied.

This Board has reviewed the evidence in this case, and we find that the Carrier fulfilled its obligation by attempting to reach the Claimant before it contacted the more junior Carman. The Organization does not dispute that the Carrier's representative made the call to the Claimant, and the Claimant admits that he might not have been home when the Carrier called.

The Carrier's records indicate that the Claimant's phone was allowed to ring ten times and that there was no answer. The past practice between the parties has been that if the senior employee is called and is not reached or is unavailable to work, the next man in succession is called. The Carrier has complied with that procedure, and therefore the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Serial No. 107

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

INTERPRETATION NO. 1 TO AWARD NO. 11545

DOCKET NO. 11213

NAME OF ORGANIZATION: Brotherhood Railway Carmen/ A Division of TCU

NAME OF CARRIER: Norfolk and Western Railway Company

QUESTION FOR INTERPRETATION

The Organization has requested an Interpretation of that language contained in Second Division Award No. 11545 which reads:

"....if anyone was harmed in this matter, it was the carman apprentice. Accordingly, he is to be compensated for any monies he would have received had he been properly placed on July 26, 1984. Compensation is awarded for the same period that Ratliff was employed,...."

An Interpretation also has been requested of the Award reading:

"Award, claim sustained in accordance with the findings."

When arriving at our Interpretation, we have carefully considered the submissions of the Parties and their oral arguments before this Board.

Award 11545 must be read in context with the Claim that was advanced by the Organization. In this case, it is particularly important to note Part 2, which reads:

"2. That the Norfolk & Western Railway Company be ordered to give Carman Apprentice Kline the preference to either go to Weller Yard and be paid for all time he would have made had he been given preference in seniority order and that he be paid all time due till the dispute is settled. Further, that Carman Apprentices E. M. Kline, P. C. Wright, J. D. Cobb, R. L. Cook, J. S. Francis, G. M. Roberts, E. M. Swafford, D. Brown and S. E. Estepp be granted a carman's seniority date back dated two years and two days and that they be recalled as carmen when needed."

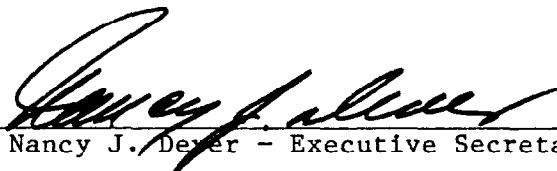
INTERPRETATION NO. 1 TO AWARD NO. 11545DOCKET NO. 11213SERIAL NO. 107

The intent of the Award was to make the Claimant whole on the basis of properly reconstructing the action to which he objected. Specifically, the Claimant was to be placed in the position on the date he would have been placed in it, had his placement been done properly in the first place. Therefore, the compensation due the Claimant, under our holding, is the amount for that period of time which he would have spent in the position had he been given proper preference in seniority order as a Carman Apprentice in place of Carman Apprentice Ratliff. The record is devoid of any evidence that the Claimant would have established seniority at Weller Yard and, thus, our Award would not require compensation beyond the date that Ratliff completed his apprenticeship.

On the other hand, given what has transpired since our Award No. 11545, this Interpretation allows the Claimant to now make a choice as outlined in the Carrier's letter of March 13, 1989 to the Organization. We agree that such a choice is appropriate in view of the Claim which asks that the Claimant be given "preference to...go to Weller Yard...." The parties are hereby ordered to comply with this Interpretation within sixty (60) days of its date.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1990.