

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11545
Docket No. 11213
88-2-86-2-17

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

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE:

(
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rule No. 28 of the controlling current Agreement when on/or around July 26, 1984, Carrier filled a vacancy at Weller Yard, Grundy, Virginia, with a junior apprentice.

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. Estep be granted a carman's seniority date back dated two years and two days and that they be recalled as carmen when needed.

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 Board observes that the Carrier has presented a number of first-time arguments and contentions in its submission to this forum which were not raised on the property. We have not considered these in our deliberations.

Turning to the essential matters properly raised on the property, the Carrier stated that a vacancy for an Apprentice Carman existed at Weller Yard, Grundy, Virginia. It further stated that Carman Apprentice R. C. Ratliff, because he had expressed a desire to work anywhere, had been assigned to that vacancy on July 26, 1984. In this latter respect, it contends that the Organization Representative had told the Carrier in June 1984 that "none of his men would go anywhere from Williamson, West Virginia to work."

The Organization, in challenging the Carrier's assignment of Carman Apprentice Ratliff, mainly asserts that the Carrier failed to comply with the part of Rule 28 which reads:

"When men are needed at a point and there are no furloughed men available at that point, furloughed men at the nearest point or points will be given preference in transferring to the point at which men are needed, Seniority to govern."

In the instant case, it essentially argues that there were nine (9) senior employees that should have been given an opportunity to have access to the job at issue. It also relies upon Second Division Award No. 6846 between the same parties as to its construction of Rule 28 and to support its view that seniority will prevail. With respect to the Carrier's contention concerning the availability of Carman stationed at Williamson, the Organization denies that its Representative made such a statement.

The Board agrees with the Organization in this matter based on the evidence which the parties presented on the property. Essentially, the Carrier never substantively refuted the substance of the Organization's contentions, namely that Rule 28 was applicable to the facts of the dispute, i.e. furloughed men at the nearest point will be given preference based on seniority.

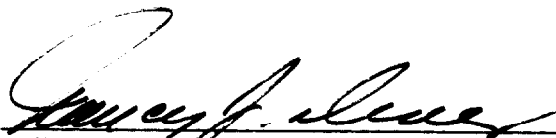
Turning to the remedy requested, we do not agree with the Organization on the basis of the record developed on the property. The Carman Apprentice was first out and, while on the property record is not specific on this point, if anyone was harmed in this matter, it was the Carman Apprentice. Accordingly, 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, less any monies received by the Carman Apprentice during that same period, if employed by the Carrier. The on-the-property record is not sufficiently clear to make a holding with respect to seniority dates. If considered necessary by the parties, seniority dates may be adjusted pursuant to their normal Agreement procedure.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.