

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11652
Docket No. 11449
89-2-87-2-96

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. That the service rights of Carman David L. Laney, Rule 27 1/2 of the Shop Crafts Agreement and Guidelines issued December 11, 1970, were violated on May 2, 1985 account Mr. Laney was denied work opportunity on a continuous basis from said date.

2. Accordingly, Laney is entitled to be compensated for all lost wages from May 2, 1985 and for each date thereafter until the violation is corrected.

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.

Claimant was a bona fide carman in furloughed status who attempted to exercise his seniority by displacing a tentative carman at Danville, West Virginia under the Displacement Guidelines of December 11, 1970. His request was refused by the Carrier on the grounds that there were no carmen tentatives employed at Danville.

Claimant thereafter attempted to file for relief work under Rule 27 1/2 and was initially denied as he could not respond to a call "under Rule 27 1/2 in the one hour time period." He was further denied as there had been no carmen tentatives working a bulletined position which he could displace.

The instant claim was filed by the Organization due to alleged Carrier violation of the Rule and Guidelines, supra. The Organization points to complaints and concerns with the practices at Danville. The Organization argues that the Claimant was not permitted to exercise his seniority rights to displace tentative carmen who were working at Danville.

It is the position of the Carrier that there was a practice of one hour to respond to a call on the property and that Claimant had initially indicated he could not respond. Further, the Carrier maintained throughout this dispute that it violated no rule as there never was a carman tentative working a bulletined assignment at Danville.

A careful review of the issues at dispute in the instant case move this Board to find for the Carrier. The Organization has provided no evidence that the tentative carman working at Danville was holding a position for which he could have been "displaced" by Agreement. Guidelines are not provisions negotiated between the parties. No probative evidence of past practice indicates that Carrier has misapplied its guidelines. Additionally, it is unrefuted in the record that the tentative carman working at Danville did not hold a bulletined or advertised regular assignment. The Organization points only to the facts of record that Carrier investigation determined that there was a tentative working at Danville. The record also indicates that the tentative was not occupying an advertised position, but doing extra work.

The Board finds that Rule 27 1/2 was not violated by the Carrier. Claimant filed to put his name on the list and his name was added to the 27 1/2 list. The Board finds the Rule is silent as to time. It also finds that the Carrier's statement of a one hour practice on the property is unrefuted. Claimant by putting his name on the list requested relief work. The Rule, supra, is clear that such work must be on regular positions and as per the note, not extra work. The evidence indicates that no such relief work on regular positions existed at Danville. Lacking Agreement language restricting the Carrier or evidence of a misapplication of the Guidelines as per the practice of the parties, the Claim must be denied for lack of proof.

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 15th day of February 1989.