

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division TCU
(
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe and Iron Range Railway Company violated the terms of our current Agreement, particularly Rule 24, when they arbitrarily assigned Missabe Division carmen to perform routine repair work at Two Harbors which is part of the Iron Range Division.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate the below listed Claimants for the days in the amount indicated:

L. H. Bangsund	December 7, 1986	8 hours time & one half rate
"	December 12, 1986	"
"	December 13, 1986	"
"	December 14, 1986	"
R. E. Torgeson	December 7, 1986	"

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.

On December 7, 1986 Carrier assigned two Missabe Division Carmen to work on repairs at Two Harbors on the Iron Range Division. On December 10, 13 and 14, 1986 it assigned one Missabe Division Carmen for the same duties. Claims were filed by the Organization contending that Rule 24 B was violated when Missabe Division Carmen were used in the performance of Iron Range Division work.

Rule 24 B provides:

"The following seniority provisions will apply to the Carmen's craft:

1. Effective March 21, 1969, any carman, carman helper or apprentice hired subsequent to said date shall be granted seniority on a common roster and shall perform work on the system.

The present carmen, carmen helper and apprentice seniority rosters shall be maintained and employees holding seniority on only one roster as of March 21, 1969 will not be forced to accept a permanent assignment on the other division. Employees holding dual seniority as of March 21, 1969 must make a determination as provided for under present rules as to returning to their original district.

Employees having seniority prior to March 21, 1969 may be used to perform temporary, or emergency work, including road and wrecking work on the system, and employees will, if entitled thereto, be granted expenses as provided for in Rule 3 during such service.

When an employee having Division seniority in a particular class as of March 21, 1969 cannot hold a position on his Division, such employee shall have the right within five calendar days of his furlough to displace any junior employee holding common seniority who is working on the other Division. If the furloughed employee fails to comply with the foregoing, the employee will not be able to displace a junior employee holding common seniority until he returns to service and is again furloughed on his Division.

This agreement supersedes all rules, agreements, memoranda and understandings in conflict therewith.

(Local Agreement 3-21-69)

Employees represented by the Brotherhood of Railway Carmen who are assigned at Keenan and/or Iron Junction may perform car inspection, repair and servicing at any point north of and including Skibo on the Iron Range Division. Employees represented by the Brotherhood of Railway Carmen who are assigned at

Proctor and/or Missabe Junction may perform car inspection, repair and servicing at any point south of and including Lester Park on the Iron Range Division."

It is our opinion that Rule 24 does not support the Organization's Claim. First it is our belief that the language of Rule 24 B does not fence in the work of the two Divisions so as to preserve to employees of one Division work on that Division to the exclusion of employees from the other. Instead, what the Rule accomplishes, in our opinion, is the removal of barriers between Carrier's two Divisions. Through attrition eventually only one roster of Carmen will exist on Carrier's entire system.

It is manifest that Rule 24 B replaced former separate Division seniority arrangements with System seniority. A reading of the clear and unambiguous language of the first paragraph of the Rule indicates that individuals hired after March 21, 1969 were to be placed on a common roster and they shall perform work on the system.

Under clear language in the second paragraph, Carmen, and others, having seniority predating March 21, 1969 would be maintained on their existing seniority rosters and would not be forced to accept permanent assignment on the other Division. However, they could be used for temporary or emergency work on the other Division and would be paid expenses as provided in Rule 3.

The Organization has stressed that the work was not temporary because Missabe Division Carmen were used repairing cars on the Iron Range Division on a day-to-day basis. Even if the Organization's point was correct a finding that the work was not "temporary" would not support a Claim on behalf of Iron Range Carmen. Rule 24 conveys a right to Carrier to use Carmen with seniority dates earlier than March 21, 1969 on temporary work on the other Division. If the work is not temporary, or an emergency (the other condition contained in the Rule), it is the employee that was misassigned that would have a complaint, not an employee from the location where the work was completed.

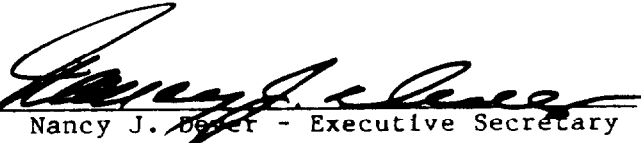
Accordingly, we do not find the Organization's Claim to be supported by the Agreement and it will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1989.

