

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc. (formerly the Chesapeake & Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated the provisions of Rule 27 1/2 of the shop crafts agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman R. Flocker (hereinafter "Claimant") when on December 23, 27, 28, 29 and 30, 1988 the Carrier worked a junior employe in violation of the aforementioned rules.

2. That accordingly, the Claimant is entitled to be compensated for eight (8) hours each day listed above that a junior employe was worked at the applicable Carmen's rate for 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 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 basic facts of this case are set forth as follows: On December 23, 27, 28, 29 and 30, 1988, Carman Michael Saul was worked under the provisions of Rule 27 1/2 of the controlling Agreement. Said employee was junior in seniority to Claimant herein. It was the Organization's position that contrary to Carrier's contention that Carman Saul worked as a Carman Helper on the above referenced dates, Saul actually worked as a Carman. The Organization's April 4, 1989 appeals letter contains a confirmatory statement by Saul that he worked as a Carman. His statement reads:

"I, Michael Saul, ID# 2623469, did in fact work as and was paid for working as a Carman during the dates in question of the December 17, 1988 through January 2, 1989 shutdown at Raceland Car Shop. As per the provisions set by Rule 27 1/2 of the Shop Crafts Agreement."

The Organization further asserts that since Carrier has not offered documentary proof to contradict Saul's statement, nor taken issue with his statement, Carrier was required under Rule 27 1/2 to call Claimant for the assignment.

In response, Carrier contends that Saul worked as a Carman Helper on the claimed dates and was also set back from Carman Tentative to Carman Helper on December 16, 1988. It also points out that since Claimant was furloughed as a bona fide Carman, he was not entitled to work as a Carman Helper.

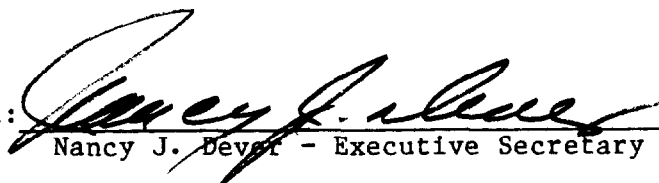
In considering this case, the Board concurs with the Organization's position. Our review of the record does not reveal Carrier conducted an investigation of Saul's actual employment status, notwithstanding its explicit commitment to check payroll records. In its conference reply letter of August 30, 1990, to the General Chairman, it indicated that it would undertake this inquiry, but there is no follow up proof that such inquiry was conducted. Simply put, there is plainly no evidence controverting Saul's statement. On the other hand, there is no dispute that Claimant who was furloughed, was senior to Saul and no dispute that he had a Rule 27 1/2 form on file. Accordingly, consistent with the pertinent provision of Rule 27 1/2, particularly Paragraphs (b) and (c) thereof, Claimant was entitled to be called to perform the Carman's work on the claimed dates and, as such, he is entitled to the Carman's pro rata rate for this time.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1992.