

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12383
Docket No. 12311
92-2-91-2-99

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation violated the provisions of the current and controlling agreement when they improperly refused Sheet Metal Worker R. D. Oneal his contractual right to place himself on the position of AC Refrigeration Specialist after he was displaced from his position by another employee.

2. That accordingly, the National Railroad Passenger Corporation should be instructed to allow Mr. Oneal to place himself on the position he originally requested, AC Refrigeration Specialist, and further, compensate Mr. Oneal in the amount of 20 cents per hour for every hour that he has been improperly withheld from the requested position, beginning with the date of November 22, 1989 and continuing until he is awarded an AC Refrigeration Specialist position.

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.

On November 21, 1989, the Claimant attempted to displace a junior employee from a position of Air Conditioning/Refrigeration Specialist. On December 5, 1989, the displacement was denied because the Claimant "...did not possess the necessary qualifications nor skills to perform the duties of an A.C.-Refrigeration Specialist in a satisfactory manner."

The Organization has at great length and skill argued that the Carrier has violated Rules 8 and 9 of the Agreement. While we find its contentions are not unreasonable, we conclude that these two Rules are not applicable in the instant case for the reasons that follow:

On October 1, 1982, the parties agreed to a Letter of Understanding that amended Rule 40(a) and in pertinent part stated:

"The selection of such Air Conditioning/Refrigeration Specialists will be accomplished in the same manner as 'lead' positions, under Letter No. 6 of the Schedule Agreement."

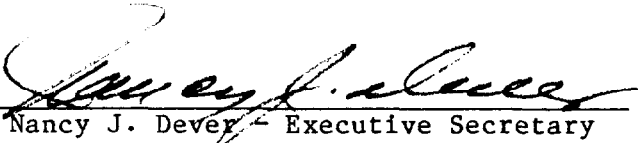
The Carrier, in its denial letter of September 20, 1990, reaffirmed the special employment conditions with respect to Letter No. 6 and this was not refuted on the property. In effect, therefore, the parties have agreed to a special rule which has been incorporated into the Agreement. The Rule in essence provides that Air Conditioning/Refrigeration Specialist positions are filled only by employees with specialized training or skills. Under the particular circumstances of this case, the Claimant did not have a demand right to the position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1992.