

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12409  
Docket No. 12263  
92-2-91-2-50

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

(Brotherhood Railway Carmen/Division of TCU  
PARTIES TO DISPUTE: (  
(Norfolk Southern Railway Company  
(formerly Southern Railway Company)

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the terms and conditions of the controlling Agreement, specifically Rules 20, 21 and 22 of the controlling Agreement along with the Junior Student Mechanic Memorandum Agreement dated March 9, 1989. This violation first took place when Carman Junior Student Mechanic S. M. Murphy, III, was assigned to the paint department to fill the vacancy of Painter C. R. Wyrick. Secondly, the company failed to assign Painter L. E. Russell to this vacancy that S. M. Murphy was assigned to even though he was a painter and the senior employe.

2. That accordingly, the Southern Railway Company now be ordered to provide the following relief to eliminate these violations: first and foremost, that Painter Russell be allowed to claim the vacancy of Painter C. R. Wyrick. Secondly, that Junior Student Mechanic Murphy be assigned to the second shift vacancy of Painter Russell. Third, that both Junior Student Mechanics Murphy and J. E. Myers be placed on the painter's seniority roster. Fourth, that eleven (11) carmen positions and two (2) painter positions be bulletined, awarded and assigned to the successful bidders.

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.

By letter dated January 31, 1990, the Organization filed a claim wherein it charged that Carrier violated the Agreement particularly Rules 20, 21 and 22. Specifically, the Organization contends that when a Student Mechanic was assigned on January 12, 1990, to fill a Painter's vacancy caused by the illness of the incumbent, such action violated the Agreement, since it denied the position to Claimant who was then working on a different shift. It maintains that since Claimant was the most senior painter to make an appropriate request to fill the vacancy position, he should have been assigned to fill it consistent with the requirements of Rule 21. This Rule reads:

"TEMPORARY VACANCIES

RULE 21. Vacancies in positions of employees temporarily absent from work because of sickness, leave of absence, etc., shall continue to be filled as follows in accordance with the past practice:

(a) The senior qualified employee desiring to do so may take the temporary vacancy by virtue of his seniority by handling the matter with the appropriate carrier officer and the local committee. Said employee shall thereafter work the position until such time as the employee who is off sick or on leave of absence returns to work.

(b) Upon the return of the employee off sick or on leave of absence to his regular position, all employees affected thereby shall return to their former positions. In event the position of an employee affected has been abolished or has been taken by a senior employee in the exercise of a displacement right the employee affected shall exercise a displacement right in accordance with Rule 26.

(c) Nothing in this rule shall be construed to prevent the blanking of positions during the temporary absence of employees due to illness, leave of absence, etc."

It also requests that Junior Student Mechanics S. M. Murphy and J. E. Myers be placed on the Painters seniority list since they were working as Painters.

Carrier contends that Rule 20 and 22 are inapplicable since they pertain (Rule 26) to permanent or new positions and (Rule 22) to vacancies of long duration. The position herein was in neither category. It notes that the contested position was blanked pursuant to paragraph (c) of Rule 21 and thus it was under no obligation to fill the temporarily vacant position. It argues that it properly assigned a Junior Student Mechanic to fill a training position in accordance with the training requirements at Coster Shop, contrary to the Organization's assertion that he was filling a Painter's vacancy. On this point it states:

"During the first three months of employment, Junior Student Mechanics at Coster Shop are assigned to different training positions throughout the shop on a monthly basis. Following this three month period, the junior students change assignments on a quarterly basis. Prior to rotation each student is evaluated by the supervisor. In the instant claim, the Junior Student Mechanic (Murphy) was assigned to fill a training position, not a painter's vacancy as you have alleged."

Moreover, Carrier maintains that it is impermissible to place Junior Student Mechanics on any journeyman's seniority roster until such student(s) performed 732 creditable days of training per all Carmen's students and Junior Student Mechanic's agreements and pointedly notes that under the March 9, 1989 Junior Student Mechanics' Memorandum Agreement, all Junior Student Mechanics are to be placed on the Carmen's seniority roster at Knoxville following completion of 732 work days.


In considering this case, the Board concurs with the Carrier's position. Firstly, there has been no showing as to how exactly Rules 20 and 22 were violated. As the moving party the Organization has the burden to demonstrate such Rule violations. Secondly, Carrier has the right under paragraph (c) of Rule 21 to blank temporary vacancies and there has been no showing that the Painter's position was not blanked. Thirdly, under the training arrangements at Coster Shop, it was permissible to assign a Junior Student Mechanic to a training position and the contested assignment under the then extant employment circumstances falls within this category. Fourthly, since the March 9, 1989 Memorandum Agreement specifically states that upon completion of 732 work days as a Junior Student Mechanic at Knoxville, the employee will be placed on the Carmen's seniority roster at this location, by definition this excludes reference to a separate Painters seniority roster. In fact, under Award 30 of Public Law Board No. 5015 involving the same parties at the same location, the Public Law Board ruled that the aforesaid Agreement eliminated work assignment distinctions between Carmen and Painters which may previously have existed in other than the assignment of Junior Student Mechanics to Brotherhood Railway Carmen jobs at Knoxville. Finally, the Board takes notice that Carrier has bulletined the positions requested by the Organization in its Statement of Claim.

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 12th day of August 1992.