

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12417
Docket No. 12331
92-2-91-2-121

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake & Ohio Railway 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 Helper J. C. Jones (hereinafter "claimant") when on March 16, 1988 the carrier worked a junior employe in violation of the aforementioned rule.

2. That accordingly, the claimant is entitled to be compensated for eight (8) hours at the applicable Carman Helper'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.

On April 4, 1988, the Local Chairman advised the General Plant Manager, Raceland Shops, Russell, Kentucky, that the Carrier had violated Rule 27 1/2 of the operant Agreement when it failed to call the Claimant in lieu of a junior Carman to work on March 16, 1988. According to the Claimant, he "...was sitting by the telephone and was 'ready and available for work'" on the day in question. In denying the claim the Plant Manager stated that an "...investigation reveal(ed) that on the morning of March 16, 1988, the Report Data Clerk attempted to telephone (the) Claimant (but) there was no answer and in order to meet the requirements of service, he telephoned (the junior) Carman Helper."

The Rule at bar reads, in pertinent part, as follows:

"Rule 27 1/2 (c)

Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the extra list in seniority order and used in accordance with the rules of the agreement."

The record shows that on December 4, 1989, or some eight months after the original claim was filed, the Report Data Clerk provided a written statement which was forwarded by the Carrier to the General Chairman in which that Clerk basically stated the same information which was provided to the Claimant at the first level of handling, namely, that a call was made to the Claimant, and absent response, the Clerk went to the next Carman in seniority order to work the position in question. Under date of June 13, 1989, the Claimant in turn provided a written statement to the Organization in which a number of points were raised. These included the fact that the Claimant was advised on March 15, 1988, that he would not need to work the following day, and that on March 17, 1988, the Report Data Clerk had informed the Claimant that he was not senior to the Carman used on March 16, 1988, when, in fact, he was. According to the Claimant, he was also told by the Clerk that he was not on the Painter Helper roster. But neither was the Carman used in the Claimant's place on that roster on March 16, 1988.

The Board is clearly confronted with conflicting evidence. The original reason for the denial of the claim on the part of the Carrier has been consistent throughout its handling, albeit a written statement describing the Carrier's version of what happened was provided by the Clerk some eight months after the claim was filed. That statement provides the same information to the Claimant that was provided when the claim was denied. Since there is allegation of a Rules' violation, the burden is on the Claimant to show that such violation took place. In a statement provided to the Carrier well over a year after the alleged incident took place the Claimant raises various issues, none of which provides sufficient probative evidence to warrant sustaining the claim, not to mention the stale character of the issues raised which the Board must conclude are more in the nature of inference than fact. On basis of the record as a whole, therefore, the Board must conclude, in accordance with arbitral precedent, that the claim must be dismissed. Such precedent has held that, absent substantial evidence, this Board has "...no way of resolving evidentiary conflicts" (See Third Division Awards 21423, 13330, 16450, 16780; and Second Division Awards 6856, 7052).

A W A R D

Claim dismissed.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of September 1992.