

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12424
Docket No. 12400
92-2-91-2-200

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

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

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the controlling Agreement when, on May 8, 1990, they advertised a job with the duties listed of a Painter for both Carmen and Junior Student Mechanics in addition to Painters. As a result of this bulletin, Carman L. J. Daugherty was assigned to this Painter's position. He was instructed to report to this position on May 21, 1990, which he did.

2. That accordingly, the Southern Railway Company be ordered to compensate Painters D. C. Tharpe, SSN# 411-74-3834; M. Woods, SSN# 409-92-0953; J. H. Strange, SSN# 412-66-0330; M. C. Smith, SSN# 409-74-1488; L. D. Carter, SSN# 415-78-3714 and L. E. Russell, SSN# 408-86-1168, beginning May 21, 1990 and continuing each work day, Monday through Friday, eight (8) hours per day on a rotating daily basis until this violation is stopped. Also, that Bulletin Nos. 52 and 57 be abolished and readvertised listing only Painters and that Carman L J. Daugherty be reassigned to a Carman's job.

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.

This dispute arises because on May 8, 1990, the Carrier posted a bulletin advertising two jobs for "Painter/Carman/Junior Student Mechanic." Two bids were received. One from a Painter, and the other from a Carman, who were awarded the positions.

The Organization takes sharp exception to the assignment of a Carman to what is considered to be the exclusive work of the Painters. In support of that position it claims that Rules 20 and 132 were violated. The Organization relies on the Agreement language without taking into consideration the amendments to that Agreement. The issue is the effect of the Junior Student Mechanic Agreement made between the Organization and the Carrier on March 9, 1989. The Organization maintains that previous rules of the working Agreement were not altered by that amendment and the Carrier cannot assign a Carman to Painter duties. This Board does not agree with that position. The junior Student Mechanic Agreement among other alternatives provides in Section 4 in pertinent part:

" . . . Employees performing service as a Junior Student Mechanic will have the duties of filling vacancies and performing the work of BRC positions in the Costner Shop facility that are not filled by employees of the Knoxville Carman and Painter seniority rosters as of January 3, 1989. . . "

In interpreting the meaning of that language, Public Law Board No. 5015 in Award 30 decided that the foregoing language:

" . . . manifestly eliminates any work assignment distinction between Carmen and Painters which may have previously existed in other than the assignment of Junior Student Mechanics to BRC jobs at Knoxville. The sentence accomplishes this result, not once but twice. First it clearly states that Junior Student Mechanics are to fill vacancies and perform the duties of 'BRC positions' - not Carmen positions and not Painter positions but BRC positions. 'BRC positions' cannot fairly be read to mean either 'Carmen positions' or Painter positions.' It must be read to include both. If there was ambiguity on the meaning of the term 'BRC positions' and this Board does not find such ambiguity to exist, it is eliminated by the inclusion of the phrase 'on the Knoxville Carman and Painter seniority rosters.' This language can only be read to mean that previous assignment distinctions which may have existed under earlier agreements are no longer present when it comes to effecting Student Mechanic assignments under the Student Mechanic Agreement."

It will be noted that the distinction between Carman and Painters is eliminated as well as the difference between Painters and Student Mechanics.

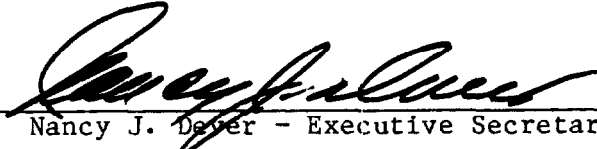
In view of the foregoing and the entire record, we determine that the controlling Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1992.