

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12704
Docket No. 12534
94-2-92-2-83

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
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(Fruit Growers Express Company

STATEMENT OF CLAIM:

- "1. That the Fruit Growers Express Company violated the controlling Agreement, specifically Rules 2, 14 and 24 of the July 1, 1945 Agreement, when Fruit Growers Express Company assigned Helper C. D. Godwin who had less seniority than Helper Larry Madison to a preferred job at Jacksonville, Florida.
2. That accordingly, Fruit Growers Express Company be ordered to bulletin jobs so the employees with the seniority have the preference of a regular 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 employe 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 Claim at bar developed after the Claimant was assigned to the heavier job of sandblasting, rather than driving a forklift. The Organization alleged violation of numerous Rules which it argued denied the right of the Claimant to utilize his seniority over a junior employee. During the on-property correspondence and by letter dated May 9, 1991, the Organization argued that the Carrier failed to properly bulletin the sandblasting and fork lift driver positions and in violating Rules 2, 14, and 24 among others, failed to permit the senior employee the choice of desirable positions.

The Carrier denied any Agreement violation in that both positions were bulletined Helper positions. The Carrier further contends that by long-standing practice and in full compliance with Agreement language, there are no distinctions between individual Helpers. Accordingly, as there exists no positions of Sandblaster and Fork Lift Driver, no vacancies existed, and there was no violation of seniority in assignment.

The Board carefully reviewed the language of the disputed Rules. Nothing in Rule 2 requires a list of principal duties in the bulletining of positions. There is no language in the Rules herein disputed that provides for sub-divisions of Helpers or establishes the separate positions of Sandblaster and Fork Lift Driver. The Organization provided no probative evidence to support the existence of said practice on this property. A review of the record finds no response to the Carrier's claim that all Helpers are similarly assigned by needs of service with no distinction by rates of pay.

Therefore, this Board's review finds no Carrier violation of the Agreement. The Claimant held a Helper position and performed the duties of a Helper. The Organization failed to prove by language or practice that bulletins must list the duties of the Helper position. In fact, Rule 2 only holds that "regular work day and work week hours shall be bulletined," which does not require the declaration of specific job duties. The Board must hold to the Rule language of the Agreement as the only language restricting the Carrier's actions. Finding no violation of the Rules, the claim must fail.

AWARD

Claim denied.

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By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.