

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12871  
Docket No. 12614  
95-2-92-2-139

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

(Brotherhood Railway Carmen Division,  
( Transportation Communications  
( International Union  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former  
( Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the controlling Shop Crafts Agreement, specifically Rule 27-1/2, when the Carrier improperly withheld from service Carman David C. Maxwell while working a Junior employe.
2. Accordingly, the carrier be ordered to additionally compensate Carman David C. Maxwell for all regular wages lost commencing sixty (60) days prior to the claim being initially filed (received initial claim by carrier, August 9, 1991) and for each day the carrier improperly withheld claimant from service and works a Junior employe, that all time be counted toward vacation requirements and that each day be accredited to a specific calendar date."

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 employee 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 Organization alleges that Carrier improperly worked a junior employe in the New Air Brake valve room while withholding Claimant from service. Claimant Maxwell was furloughed on August 18, 1990. The successful bidder, Jeff Fraley, had been furloughed in December 1989. Both had filed Rule 27 1/2(c) requests and Mr. Fraley had worked subsequent to his furlough at various times in the Raceland Car Shop and elsewhere. Rule 27(c) states that:

"(c) Furloughed employes 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 employes will be placed on the extra list in seniority order and used in accordance with the rules of the agreement."

Carrier determined that Claimant was not qualified to work in the Air Brake shop, while Mr. Fraley was, because he had come in on his own time while on furlough to train for work in the shop. Claimant pointed out that when he was hired in 1979, he worked in the valve room and had been taught to test and tear down valves. As the more senior man, he should have been called. The Organization alleges that seniority is the only consideration in Rule 27(c). There is no mention of qualifications.

This Board finds Second Division Award 12191, involving the same parties, the same Agreement language, and the same issue and work to be dispositive of this case. Rule 27(c) makes reference to the fact that employes are to be used in accordance with the rules of the agreement and that all other such rules allow Carrier to consider qualifications. That award must be considered Res Judicata.

In Claimant's case, there is no evidence in the record that he met Carrier's standards to do the work in question. Carrier provided a list of Carmen qualified to perform tear down, build, and testing work in the Air Brake shop and Claimant's name was not included. Mr. Fraley, on the other hand, underwent two weeks of voluntary training on his own time and was officially deemed to be qualified. Carrier's assessment of Claimant's lack of qualifications went substantially unrefuted.

Based upon the above, the claim must be denied.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.