

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13131

Docket No. 13002

97-2-95-2-24

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That, in violation of the Employee Transfer Agreement (ETA) and Rule 13 of the Working Agreement, but not limited thereto, CSXT (former C&O Railway Co., the B&O Railroad Co. and the Western Maryland Railway) arbitrarily and capriciously denied Machinists Smith and Watson the right to exercise their seniority with CSXT to new positions in CSXT's Richmond Roadway Equipment Repair Shop before new people were hired off the street.

Machinists Smith and Watson are hereinafter referred to as the Claimants.

2. That, accordingly, CSXT be ordered to give the Claimants a position in the Richmond Shop as of the date the first former CSXT Employee was allowed to establish a position in the Richmond Shop and make them whole for any wages and benefits they lost due to CSXT's denying them their rights under existing Agreements between CSXT and the International Association of Machinists and Aerospace Workers, hereinafter referred to as the Organization."

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 were given due notice of hearing thereon.

The Organization alleges that the Carrier failed to comply with the Agreement in hiring new employees off the street rather than providing Claimants their transfer rights to positions in the Richmond Roadway Equipment Repair Shop at Richmond Virginia. The Organization alleges that as furloughed Machinists the Claimants were denied their rights under the Transfer Agreement. The Organization argues in its Submission that the Claimants:

“...in addition to performing normal machinists duties ... operated and maintained several different types of machines used in the overhaul of wheel sets.”

The Board studied all issues presently at bar. The Organization carries the burden of proof to establish with sufficient probative evidence an Agreement violation. This record includes a denial by the Carrier of “contractual” entitlement to the Roadway Equipment Mechanic positions at Richmond. It includes a denial that the Claimants had the required qualifications and understanding of hydraulic and electrical systems. Nothing in this record or the Organization’s statement, supra, suggests that the Claimants had the requisite skills. The Carrier further asserted a practice of selection based upon ability. Whatever the merit of the Carrier’s statements, they were not adequately rebutted by the Organization and stand before this Board as fact.

Accordingly, in this instant case, the Organization has not met its burden of proof. Given the full state of this record, the claim must be denied.

AWARD

Claim denied.

Form 1
Page 3

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ORDER

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 10th day of June 1997.