

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13271  
Docket No. 13140  
98-2-96-2-39

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

**(Brotherhood Railway Carmen, Division of  
( Transportation Communications International Union**  
**PARTIES TO DISPUTE: (**  
**(Southern Pacific Transportation Company**  
**( (Western Lines)**

**STATEMENT OF CLAIM:**

**"Claim of the Committee of the Union that:**

- 1. That the Southern Pacific Transportation Company (Western Lines) violated the controlling agreement, specifically Rules 23 and 38, when Carrier arbitrarily denied the following named furloughed employee of the Carmen's Craft, C.L. Martinez employment over new employee off the street.**
- 2. That accordingly, the Carrier be ordered to compensate the Claimant at the pro rata rate of pay for each and everyday from July 31, 1995 as long as this continuing violation is allowed to exist."**

**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 Claimant holds seniority at the Carrier's Ramac facility at Roseville California. He was furloughed on February 5, 1987. Since that date he has, at various times, submitted transfer/application forms for vacancies at Roseville. However, he has not been selected for any of these positions.

On September 14, 1995, the Organization filed a claim on behalf of the Claimant in which it contended that the Carrier violated Rule 23. That Rule provides as follows:

"If additional men are needed in excess of those available under Rule 29(d), qualified men at other points, who are laid off will, in accordance with their seniority, be permitted to work in the class and craft at the nearest point where additional men are needed, subject to return to home point, when notified, with seniority unimpaired. Such transfer to be made without expense to the Company, except that such employee will be furnished free transportation."

The other Rule applicable to this dispute is Rule 32, which in pertinent part, reads:

"Seniority of employees of each class in a craft shall be confined to the point where they are employed. Each General Shop shall each be considered a separate point. Seniority rosters shall be maintained for each class of each craft. . . ."

The controlling issue is whether, pursuant to Rule 23 of the Agreement, the Carrier was required to transfer a furloughed employee from a location where he had seniority (Ramac in this case) to a location where he did not have seniority. The Board finds no evidence that Rule 23 gives the employee the right to transfer. Similar contract language has been construed as we have here. (See, Second Division Award 12607).

The Board must note that our construction of the pertinent contract language is given added substance because no appeal was filed on the property, even though the Claimant had the opportunity to do so, beginning in 1991. The Board, therefore, must conclude that the Claimant also recognized that he did not have a contractual right to transfer.

**AWARD**

**Claim denied.**

**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 18th day of May 1998.**