

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13644

Docket No. 13537

01-2-00-2-13

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood Railway Carmen Division/
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the carrier violated the terms of our current agreement, in particular Rules 27.2 and 27.3(a) when they failed to recall David M. Crockett from furlough.**
- 2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carmen David M. Crockett in the amount of eight (8) hours for each workday he was improperly withheld from service. Also, all other benefits he may have earned, including, but not limited to insurance benefits, wage increases, railroad retirement benefits, vacation entitlement and his seniority unimpaired.”**

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 was hired under the position title of Carman (Painter) on December 1, 1997 at Waterville, Maine. He was subsequently furloughed on April 26, 1998. Between October 16, 1998 and January 18, 1999, the Carrier hired five new employees as Carmen. The Organization contends that the Claimant was not and should have been recalled from furlough for one of these positions, based on Rule 27.2. This Rule requires the recall in seniority order of "qualified furloughed employees."

The resolution of this dispute requires review of the parties' conflicting interpretations of the Seniority Roster and the nature of the positions held by employees on the roster. These are as follows:

1. Seniority Rosters - In 1995 the parties agreed to establish a combined seniority roster. Subsequently, the 1998 seniority roster listed active employees in three categories: Carman, Carman with "prior rights Painter"; and Painter. The Claimant was the least senior employee on the roster, listed as a "Painter."

The 1999 seniority roster followed the same pattern, but added two additional markings. These showed one Carman as "Carman & Painter," and three Painters (including the Claimant) with the additional marking of "Painter." (This roster is the subject of a separate claim, not yet resolved by the Board.)

The Carrier contends that Painter and Carman are separate and non-interchangeable positions. The Organization argues that all employees on the roster are Carmen, with some having the additional qualification of Painter, based on the advertisements to which the employees won places on the roster (see below).

It should also be noted that all these System Seniority Rosters carry the general heading of "Carman."

2. Position Advertisements - The record shows that, for whatever reasons, all position advertisements include identical job descriptions, which include the requirements to undertake all Carman responsibilities. Some of the advertisements include the additional requirement that applicants "must be qualified painters."

On the face of it, this would appear to require all applicants to be qualified as Carmen, while, in a few instances, they must also be qualified Painters. This is the conclusion on which the Organization relies. The Carrier contends, however, that, where “qualified painters” are required, it was not intended to include Carman qualifications (despite the wording of the advertisements).

3. Craft/Classification - The Carrier consistently refers to Carman and Painter as separate “crafts.” The Organization represents but one craft that of Carman, as distinguished from other crafts such as Electricians, Machinists, etc. Within a craft, there may be various classifications. At most, the Carrier is distinguishing between classifications of Carman and Painter, with some employees holding qualifications and/or previous service in both classifications.

With these clarifications, it is apparently the Carrier’s argument that, despite the wording of the advertisements, the Claimant (as well as two other employees) were employed solely as Painters and do not have qualifications as Carmen.

Five employees were hired as Carmen while the Claimant was on furlough, the most recent commencing employment only 41 days prior to the initiation of the claim here under review. The Carrier points out that Rule 27.2 requires that, to be recalled from furlough, an employee must be “qualified.” The record shows that the Carrier appropriately determined that the Claimant was not qualified as a Carman and thus was not entitled to recall to a Carman position under Rule 27.2. The Board is given no explanation as to why the full Carmen qualifications were listed in the advertisement under which the Claimant entered service as a Painter. The Organization argues that the advertisement is a concession by the Carrier that the Claimant held Carman qualifications. The Board finds this argument unconvincing, given the Claimant’s actual lack of Carman experience and/or qualification.

There remains one other aspect of the dispute. The Carrier emphasizes that Rule 27.2 does not require the recall from furlough of an employee not “qualified” for vacancy. In reply to this, the Organization stated during the claim-handling process as follows:

“After investigation, it has been discovered that at the time of hiring these five (5) new employees [while the Claimant was in furlough status], not one maintained the basic skills as required of the carman craft. Only one had

a class license, the others were required to get a permit and then train for the CDL test. Furthermore, the carrier had to train all of these employees for their welding tests.”

The record shows no rebuttal by the Carrier to these assertions. The question remains, then, as to whether the Carrier may fill a Carman position with a newly hired employee who may not have previous Carman qualifications, in preference to recalling a furloughed employee with Painter qualifications but without Carman qualifications and/or experience. Equity would dictate that the furloughed employee should be recalled. The Board, however, is bound by the Agreement and not equitable considerations. The only Rule cited governing furlough recall is Rule 27.2, which binds the Carrier to recall only “qualified” employees. Without other Rule support, the Board is without authority to find the Carrier’s action impermissible.

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 6th day of August, 2001.