

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13669

Docket No. 13535

02-2-00-2-8

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

(Brotherhood of 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 Rule 12.4(b) when they arbitrarily failed to recognize the seniority of Carman William M. Dostie in the daily assignment of work.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman William M. Dostie in the amount of eight (8) hours pay at the straight time rate as remedy payment. Additionally, to allow Carman Dostie to utilize his seniority as set forth in the collective agreement.”

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.

Rule 12.4(b) reads as follows:

"In the daily assignment of work to employees awarded positions under this rule, fitness, ability and qualifications being equal, seniority will prevail."

On January 18, 1999, shortly after the commencement of the workday, the Claimant was directed to salt and sand the repair track. Five other Carmen, all with lesser seniority than the Claimant, were assigned to work inside on car repair. The Claimant protested that he should have been permitted to perform car repair work inside, with a junior employee assigned to the outside salting and sanding.

Whether or not the Claimant had commenced work on an inside assignment is in dispute, but the Board does not find this determinative.

The Carrier's principal defense in failing to honor the Claimant's seniority is as follows:

"The inside work performed that day involved welding. The five employees assigned to work inside on this day, all have superior welding skills compared to the Claimant. Supporting this position, is the fact that all five have been certified to perform MIG welding under the standards prescribed by the American Welding Society. The Claimant, despite his efforts to do so, still has not qualified."

This argument would be persuasive, if supported by the facts. The Organization, however, provided documentary evidence that two of the junior employees were not certified for certain welding qualifications until April 7, 1999, three months after the incident here under review. Thus, the Carrier's reliance on the Claimant's lesser "fitness, ability, and qualifications" on January 18, 1999 is faulty.

Award 13282, involving the same parties in virtually identical circumstances, sustained the Organization's position. The Board reaches the same conclusion here. Particularly in view of Award 13282, effective May 18, 1998, remedy of a day's pay to the Claimant is appropriate.

**Form 1
Page 3**

**Award No. 13669
Docket No. 13535
02-2-00-2-8**

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 11th day of February, 2002.