

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13812

Docket No. 13653

04-2-02-2-12

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 8.1 when they arbitrarily sent two (2) employees from the Maine Central Seniority District into the Boston and Maine Seniority District to perform carman work.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carmen James P. Besemer and Sylvantus Moses in the amount of, four (4) and five (5) hours respectively, at the overtime rate. This is the amount they would have earned had the carrier lived up to the terms of the 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.

The claim centers on the Carrier's decision to send two Carmen who were assigned to the Waterville Car Shop to perform re-railing operations in Saco, Maine, at the time the two Carmen were working in Rigby Yard. This occurred on July 3, 2000.

On July 29, 2000, the Organization filed the instant claim.

The Carrier contends the Organization is attempting to get through arbitration what it could not through bargaining. They insist there are no divisional districts. They argue there is no proven violation of the terms of the Agreement. They discount any assertion there is a past practice supporting the Organization's claim. Nor, they say, is there supporting language or seniority districts. They maintain Rule 8 merely establishes the principal of prior rights and system seniority.

They contend the prior rights only come into play when vacant positions are being filled. They say there are no prior rights in the daily assignment of work. They submit the current situation did not involve bulletined positions.

They state only one Claimant in the instant case would be eligible for prior rights and the record in this case supports that position.

The Organization maintains the Carrier is incorrect in its interpretation of Rule 8.1. They say the Carrier inappropriately references Rules 12 and Rule 30 to support their contention. They insist the intent of the parties in negotiating Rule 8.1 was to preserve the work in the Maine Central Railroad and the Boston and Maine Corporation to those employees who hold prior rights.

The Organization argues the Carrier violated the Agreement when they ordered two employees from the Maine Central Seniority District to perform Carman's duties within the Boston and Maine Seniority Districts.

The Carrier contends the language of Rule 8.1 deals only with bulletined positions. However, the Board cannot accept such restricted language. First, if the parties had intended that prior rights were restricted only to bulletined positions they could have written this restriction into the Rule. They did not. Instead, the Rule clearly states that, "Employees who hold prior rights to Maine Central Railroad or Boston and Maine Corporation work on the effective date of this Agreement will retain such rights." Work certainly has an accepted meaning in the realm of labor relations. That work consists of the normal duties performed by the employees within the respective seniority district.

Therefore, the claim is sustained to the extent that Claimant Moses be paid five hours overtime wages as a result of not being called to perform the work. Our findings are confined to the case before us and are not a precedent for future disputes.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of October 2004.