

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13874
Docket No. 13767
05-2-05-2-18

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/Division of TCU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. The Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 26.1 when the Carrier arbitrarily denied Carman Timothy Locke his displacement rights.
2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carmen T. Locke in the amount of eight (8) hours, plus 160 total miles at \$.28 mile and \$1.00 per day in tolls, for each day that Carman T. Locke was forced to travel from Waterville Shop to Rigby Yard. This is the amount he would have earned had the Carrier not violated our 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 Claimant, T. Locke, as the junior carman who was CDL qualified was forced by the Carrier to fill the position at the Rigby yard while the most junior carman became CDL qualified.

The Organization argued that the Claimant filled out the appropriate form to displace a junior carman. The Carrier would not allow this displacement in that it needed a CDL licensed driver at the Rigby yard. The Carrier would not let the Claimant displace although it subsequently hired a non-CDL driver with no railroad experience at the Rigby yard.

It is the Organization's position that this violated Rule 26.1 of the current agreement. The Claimant was not allowed to displace a junior employee consistent with Rule 26.1. The Carrier could have qualified the employee involved during the four years that he was employed. As a result, the Claimant was not allowed to displace him. The Carrier further violated Rule 12, 25(a) when it did not allow Carman Witham 20 working days to demonstrate his ability. Therefore, the claim should be sustained.

The Carrier argued that the Organization did not meet its burden in that Rule 26 does not support the Organization's position since Section 1 of Rule 26 does not preclude the Carrier from assigning work in the manner presented by the facts of this case. Rule 12 provides the Carrier with the basis for force assigning the Claimant to the vacant position. The Carrier filled the two no-bid positions with the most junior qualified carmen. The position in Rigby had to be filled with the most junior qualified carman, which in this case was the Claimant. Carman Witham was not qualified and could not hold the position. In addition the Carrier had no obligation to require junior carmen to get CDL licenses although the Parties did subsequently agree that the most junior carmen should obtain their licenses in order to prevent this situation from happening again in the future. Therefore, since the Organization failed to meet its necessary burden, the claim should be denied.

Upon complete review of the evidence, the Board finds that we have two rules seemingly at odds under this very unique situation. The Board noted that the Organization and the Carrier have taken steps to insure that this situation does not

happen again and, under the unique circumstances of this case, the Board finds it appropriate to award to the Claimant one day's pay at his regular straight time rate.

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 22nd day of December 2005.