

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier used Tinner Foreman M. Rauls from Seniority District 1 to perform tinning work on Seniority District 2 beginning October 8, 1984 (System File MW-85-4-CB/53-77).

(2) Because of the aforesaid violation, in addition to what he was paid at the tinner foreman's rate, Tinner Foreman S. E. Swaim shall be allowed one hundred ninety-two (192) hours of pay at the tinner foreman's straight time rate for the period October 8 through November 8, 1984 and eight (8) hours of pay at the tinner foreman's straight time rate for each work day subsequent thereto on which Tinner Foreman M. Rauls performs work on Seniority District 2."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

Claimant has a Tinner Foreman seniority date of July 1, 1977, on Seniority District 2 which covers territory South of Texarkana (MP 417.53). M. Rauls has a seniority date of January 25, 1977, as a Tinner Foreman on Seniority District 1 which covers the territory North of Texarkana (MP 417.53 to Illmo, Missouri).

For the period October 8 through November 8, 1984, Rauls performed Tinner Foreman's work in Seniority District 2 including building and installing air ducts and other sheet metal projects.

As a result of Carrier's action, the Organization filed this Claim. In it the Organization contends that Carrier violated Article 2, Section 2(a) and Article 6, Section 1 of the Agreement when Rauls performed tinning work in Seniority District 2. Those Rules read, in relevant part:

"ARTICLE 2, SECTION 2(a) - Note: Seniority rights of employees to new positions and vacancies are restricted to the districts having boundaries as follows:

- DISTRICT 1 - Territory north of Texarkana (MP 417.53) to Illmo, Mo.
- DISTRICT 2 - Territory south of Texarkana (MP 417.53)
- DISTRICT 3 - Territory Kansas City, Ks. to and including E. St. Louis Yard, Ill.
- DISTRICT 4 - Territory Topeka to Tucumcari."

"ARTICLE 6 - SENIORITY ROSTERS, SECTION 1 - Seniority rosters of employees of each subdepartment by seniority districts will be separately compiled. Copies will be furnished foremen and the General Chairman and District Chairmen, and be posted in tool houses, and other convenient places available for inspection by employees interested. Seniority roster will show the name of each employee and his seniority date by classes."

The Organization maintains that these Rules require that the senior employee be assigned the work within a particular district. Here, Claimant was the senior employee in Seniority District 2. Thus, the Organization concludes that Claimant should have performed the work in dispute.

Carrier, on the other hand, asserts that the Claim was procedurally defective in that the Organization erroneously stated in the Claim that Claimant was furloughed during the period in question. A review of the payroll records furnished reveal that Claimant was working and receiving pay during the Claim period.

The Carrier also disputes the propriety of the Claim on the basis that Claimant was fully employed during the period the disputed work was performed by Rauls. Since Claimant did not suffer any monetary loss thereby, Carrier maintains that even if an Agreement violation is found, no monetary relief should be awarded.

After a thorough review of the record evidence, this Board concludes that Claimant was entitled to perform the work in dispute due to the clear and unambiguous language of the Agreement. That language requires that assignment in a seniority district is limited to those employees holding seniority in the district. Here, the work performed was Tinner Foreman work in District 2. It belonged to the senior employee in that district. Claimant is that senior employee.

Accordingly, Claimant is entitled to 192 hours of pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.