

Award No. 6246
Docket No. 6078
2-RF&P-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carmen regularly assigned at Richmond, Virginia; E. W. Jones, R. L. Owens, W. L. Lucas, W. G. Fahnestock and C. C. Moore's service rights and rules of the controlling agreement were violated July 28, 29, 30, 31; August 1, 4, 5, 6, 7, 8, 1969, account other than Carmen (gang foreman—F. M. Bowling) from Richmond, Virginia filled vacation vacancy of Carman A. E. Martin at Fredericksburg, Virginia from July 28 to August 8, 1969 and received the foreman's rate of pay in violation of Letters of Understanding dated June 29, 1967 and May 10, 1968 and Rule 29.

2. Accordingly the following carmen are each entitled to be additionally compensated at carmen's straight time rate as follows: R. L. Owens, July 28 and 31, 1969 (16 hours); W. L. Lucas, July 29 and 30, 1969 (16 hours); E. W. Jones, August 1 and 8, 1969 (16 hours); W. G. Fahnestock, August 4 and 5, 1969 (16 hours) and C. C. Moore, August 6 and 7, 1969 (16 hours).

EMPLOYEES' STATEMENT OF FACTS: The Richmond, Fredericksburg and Potomac Railroad Company, hereinafter referred to as the carrier, owns and operates a large facility at Richmond, Virginia known as Bryan Park Terminal, consisting of shop track, diesel house, passenger station, transportation and classification yards, where cars are switched, repaired, classified and cars are interchanged from other roads to the R.F. & P. lines, 24 hours a day, 7 days a week, where a large number of carmen are employed and hold seniority under rule 28 of the Shop Crafts Agreement.

Carmen R. L. Owens, W. L. Lucas, E. W. Jones, W. G. Fahnestock and C. C. Moore hereinafter referred to as the claimants hold regular assignments at carrier's Bryan Park Terminal Shops.

Fredericksburg. This Division has repeatedly held that the burden of proving a claim rests on the party seeking its allowance.

In a letter to the Director of Personnel dated October 17, 1970, the organization apparently concluded that inasmuch as Mr. Bowling received the gang foreman's rate of pay while filling the Car Inspector vacation vacancy, their Agreement was violated.

The carrier asserts that this reasoning too is erroneous as Article 10 of the National Vacation Agreement, of which this Carrier is a party, clearly supports the carrier's action of allowing Mr. Bowling his gang foreman's rate of pay while working as a car inspector at Fredericksburg. Article 10 of the vacation agreement reads in pertinent part as follows:

"10. (a) An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater * * *"

The carrier also relied upon Rule 14, the pertinent part of which reads, "When an employee, except an apprentice, is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

4. THE CLAIMANTS ARE NOT ENTITLED TO THE COMPENSATION WHICH THEY CLAIM.

The carrier wishes to emphasize the fact that the carmen's agreement is silent with respect to the filling of temporary vacation vacancies on other seniority districts. Claimants in this dispute hold seniority on the Richmond seniority district roster and hold no seniority on the Fredericksburg seniority roster. There is no provision in the agreement which obligates the carrier to use the claimants to perform work at Fredericksburg which was performed by the senior furloughed employee on the Fredericksburg roster.

The Second Division has no jurisdiction to write new rules under the guise of interpretation which would give employees on the Richmond seniority roster a preferential right to work vacancies on the Fredericksburg seniority roster. Only the parties can do that, and they have done so in the rules which govern this case.

In view of the foregoing, the carrier submits that the claims of the employees is without basis or merit and should be denied.

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.

Carrier operates a facility at Richmond, Virginia, known as Bryan Park Terminal, consisting of shop track, diesel house, passenger station, transportation and classification yards, where cars are switched, repaired, classified, and cars are interchanged from other roads to the Carrier's lines. A large number of carmen are employed at this facility and hold seniority under Rule 28 of the effective Agreement between the parties. Claimants held regular carmen assignments at this Bryan Park Terminal.

Carrier also operates a facility at Fredericksburg, Virginia. Only one carman is employed at Fredericksburg, and this is a separate seniority point. F. M. Bowling, a furloughed carman at Fredericksburg, secured employment and established a date on the carmen's seniority roster at Richmond, Virginia. An agreement was entered into by Carrier's Director of Personnel and Employees' General Chairman on May 10, 1968, wherein it was agreed that F. M. Bowling may fill temporary vacancies at Fredericksburg, including vacation vacancies, without affecting his seniority at Richmond.

Bowling was subsequently promoted to gang foreman at Richmond, but the Carrier continued to utilize Bowling to fill carmen vacancies at Fredericksburg. The Employees contend that the Carrier violated Rules of the effective Agreement, and the letters of understanding by utilizing a gang foreman to fill carmen's vacation vacancy at Fredericksburg, Virginia. The Employees contend that it was not the intent of the letter of understanding dated May 10, 1968, to use F. M. Bowling to fill any carmen vacancies after being promoted to gang foreman.

The Employees rely upon Rule 29 of the Agreement. Rule 29 reads in part as follows:

"None but mechanics, apprentices and hourly rated gang leaders regularly employed as such shall do mechanic's work as per special rules of each craft, * * *."

The Employees also rely on a letter of understanding dated June 29, 1967, which reads in part:

"It is understood that employees promoted to hourly rated gang foreman positions will not work with their tools; however, they will work up AAR reports and/or any other clerical work incidental to their foreman duties."

There is no dispute that F. M. Bowling was paid the foreman's rate of pay while filling the carmen's vacation vacancies on the dates in question.

Carrier contends that seniority right of all employees are limited to the point employed, and relies upon Rule 28 of the effective Agreement. Rule 28 reads in part:

"Seniority rights of all employees in each craft will be limited to the point employed except as specified herein. * * *"

The Claimants held no seniority at Fredericksburg and have no valid claim to any work at that point. In the absence of an agreement right by the Claimants the claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of February, 1972.