

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, J. Potter, Laborer, Helena, Montana, was denied the opportunity to work where a junior employee was working, from December 26, 1980 through April 27, 1981.

2. That, accordingly, the Carrier be ordered to compensate Mr. Potter for all time lost between December 26, 1980 and April 27, 1981 at the pro rata rate.

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 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.

The Claimant was furloughed on June 30, 1980, from his Laborer position at Carrier's Livingston, Montana roundhouse. On that same day, the Claimant submitted a written request indicating his ". . . wish to perform relief work at the Livingston Mechanical Facility." According to the Organization, the Claimant submitted the aforestated request because "(H)e was informed by the Carrier at that time that there was no one in the seniority district that he could bump." Be that as it may, the record shows that the Claimant, for whatever reason, did not exercise his seniority as per Rule 20(c) and displace more junior employees at the Carrier's other points.

During his layoff, the Claimant performed relief work at Livingston under Rule 21 and he received compensation in the amount of \$3,964.34 for his services.

While the Claimant was furloughed, a junior Laborer, Philis Frank, was working a regular assignment at the Carrier's Helena, Montana facility, which she had secured through the exercise of her seniority on April 7, 1980. Employee Frank maintained this position until April 27, 1981. The record is unclear as to the reason for Employee Frank's separation from the position at the Helena facility.

According to the record, the Claimant contends that on July 18, 1981, he first became aware that a junior employee was working as a Laborer at the Helena facility when he was furloughed on June 30, 1980.

On December 17, 1981, a Claim was filed in protest of the Carrier's action herein. Said Claim was progressed on the property and is now the subject of this proceeding.

The Organization's basic contention in this dispute is that the Carrier's failure to call the Claimant to perform relief work in Helena, Montana violated Rule 21(c) of the Parties' Controlling Agreement. Said Rule, in pertinent part, reads as follows:

"Rule 21. USE OF FURLOUGHED EMPLOYEES

(a) The Carrier shall have the right to use furloughed employees to perform relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph (b) hereof their desire to be so used.

* * *

(b) Furloughed employees desiring to be considered available to perform such relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work.

* * *

(c) Furloughed employees who have indicated their desire to participate in such relief work will be called in seniority order for this service.

* * * * *

According to the Organization, by filing a Rule 21(c) request for relief work, Claimant was contractually entitled, on a continuing basis, to perform any available permanent or temporary work in his seniority district. Moreover, the Organization further charges that "... Carrier should have contacted the Claimant for relief work in Helena during this time."

The Carrier challenges the Claim both procedurally and on the merits.

Initially, the Carrier argues that the Claim is procedurally barred since it was not timely filed. In this regard, the Carrier maintains that the initial Claim was not filed until December 17, 1981, which was some eighteen (18) months after the Claimant's furlough; and even if the Claimant was unaware of the alleged violation until July 18, 1981, as he contends, ". . . the claim submitted December 17, 1981, was 3 months beyond the 60 days of claimant's alleged 'first knowledge' of the occurrence on which this claim is based."

Continuing, the Carrier further contends that Rule 21 was not violated since the Claimant was used to perform relief work; and, the only reason that the junior employee worked at Helena was because the Claimant, for whatever reason, chose not to exercise his seniority under Rule 20(c) of the Agreement and displace the less senior employee, P. Frank, at the time of his furlough or within five (5) days thereafter as required. Said Rule reads as follows:

"(c) The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping' will be permitted only when existing assignments are cancelled, in which case the employee affected may, within five (5) days, displace any employee his junior whose position he is qualified to fill."

Ordinarily, we decide procedural issues first. However, since the instant dispute is based on an alleged continuing violation which, of course, is factually relevant to whether the Claim was timely filed, we must first decide if any contractual violation occurred.

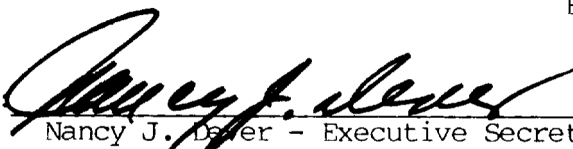
After a careful examination of the complete record in this matter, it must be determined that the Claim lacks merit since we cannot find a contractual violation which is attributable to the Carrier. For whatever reason, the Claimant chose to remain on furlough status and perform relief work at the Livingston Mechanical Facility rather than promptly availing himself of his Rule 20(c) seniority rights and bumping into the full-time position at Helena which was occupied by P. Frank, who was junior to the Claimant. Moreover, the Claimant's contention that he was informed by some unidentified supervisor that ". . . there was no one in the seniority district that he could bump," is not supported by a single shred of probative evidence. For these reasons, the Claimant's action or inaction is viewed as being his own undoing, and the instant Claim, therefore, must be denied since no contractual violation, on the Carrier's part, continuing or otherwise, has been proven.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 3rd day of December 1986.