

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

1. That the Belt Railway Company of Chicago violated the terms and conditions of the current Agreement specifically the time limits provisions of Rule 20, which is taken from Article V of the August 21, 1954 National Agreement, when Mr. J. D. Mowery Superintendent Car Department, failed to respond to a time claim submitted by Local Chairman B. Dearth by letter dated March 29, 1983.

2. Further, that the Belt Railway Company of Chicago reneged on a written Agreement dated December 16, 1983 signed by Mr. Woodrow M. Cunningham, Director of Labor Relations and Personnel, which clearly states that both parties would be bound by the referee's interpretation to Second Division Award No. 9362 when the Carrier refused to honor their commitment after said interpretation was made by Referee Goldstein.

3. That the Belt Railway Company of Chicago violated Rules 16, 21, two Memorandums of Agreement dated September 8, 1950 and an Agreement dated June 4, 1953 when on December 19, 1982 Carman M. Sage was furloughed out of seniority order and a junior Carmen (sic) was allowed to continue to work as a Carman for all of the time Carman Sage was in a furloughed status, and thereby causing Carman Sage the loss of Carman's wages from December 19, 1982 until recalled on May 17, 1983.

4. That the Belt Railway Company of Chicago be ordered to compensate Carman Sage for each day he was furloughed from December 19, 1982 until his recall on May 17, 1983.

5. That because of the Belt Railway Company of Chicago's reneging on this agreement to satisfy this claim when a favorable interpretation was received from Referee Goldstein on Second Division Award No. 9362, they be ordered to additionally compensate Carman Sage fifteen (15) percent interest on all reparations due from the date of Referee Goldstein's Interpretation to Award No. 9362, which was May 22, 1985 until Carman Sage receives his just remuneration.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant began employment with the Carrier on September 16, 1978 as a Carman-Helper. On October 9, 1978, he was upgraded to the position of Temporary Carman.

By agreement of the parties, a Carman Helper must work as a Temporary Carman for 950 days in not less the four years in order to be promoted to the position of Journeyman Carman. On April 6, 1980, however, Claimant and five other employees were demoted to the Carman Helper position. A claim was filed, the Organization contending that the demotions were merely disciplinary action in disguise, so labeled in order to evade the procedural requirements for discipline under the labor contract. The Board agreed in Second Division Award 9362 and ordered reinstatement "according to their seniority" and compensation for any lost wages.

Carrier adjusted each Claimants' pay, but refused to credit the period during which they had been demoted toward the 950 days needed for full Carman Mechanic status. Thus, when furloughs were made, the failure to credit those days also meant that these five were furloughed earlier than they would have been without the improper demotion.

The Organization sought an Interpretation of Second Division Award 9362, asking whether the relief intended in that Award included restoration of seniority, and specifically whether the time spent improperly demoted should be counted as time working as Carmen Mechanics. The Board agreed that it should.

The Carrier responded by crediting the five men with days worked as Carmen Mechanics for all the days worked as Carmen Helpers during the demotion. However, it refused to make an adjustment for the time lost during the furloughs. Thus, while Claimant has now apparently qualified as a Carman Mechanic, the issue presently before the Board for consideration relates to his beginning seniority date in that classification and his place on the seniority roster.

The above-captioned docket was heard on February 20, 1987. On April 2, 1987, the United States District Court, for the Northern District of Illinois, Eastern Division (Case Number 86 C 1465), granted the Organization's motion for summary judgment, ordering the Carrier to credit the five Claimants all days of work as Carmen Mechanic of which they were deprived as a result of their demotion on April 2, 1980, including time spent on furlough which would not have occurred if Claimants had worked as Carmen Mechanics during the demotion period, for purposes of their seniority as Carmen Mechanics.

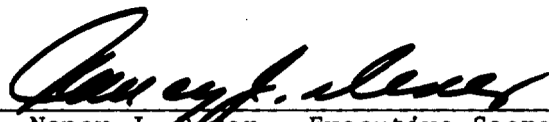
We find the foregoing order dispositive. Carrier has been ordered to make the seniority adjustment sought by the Claimant. As the Court indicated, Claimant is entitled to be made whole "for the effects of the improper demotion on ... seniority as well as ... pay." Accordingly, this Board now finds that Claimant shall be awarded whatever loss of compensation he suffered as a result of the improper furlough. The Organization's request for interest on the claim is denied, however.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1988.