

Award No. 3547
Docket No. 3202
2-NYC-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

NEW YORK CENTRAL RAILROAD COMPANY
(Northern District)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement beginning on September 30, 1957, at Detroit, Michigan, when furloughed employees who were previously hired or promoted as per Rule No. 177, Section (a), but furloughed before acquiring the eight periods of 130 days each as per Rule 177, Section (b), were used to fill vacancies on a day to day basis intermittently.

2. Accordingly, Car Inspectors E. Zambrazycki, be compensated at time and one-half rate for September 30, 1957; O. Turner be compensated at same rate for October 5, 1957; H. Kubin be compensated at same rate for October 5, 1957, R. Kirk be compensated at same rate for October 6, 1957; and other Car Inspectors be compensated at same rate for each violation subsequent to October 7, 1957, as mentioned in Section 1 above.

EMPLOYEES' STATEMENT OF FACTS: Beginning- with and on September 30, 1957, furloughed employees who previous to being furloughed were hired or promoted as per Rule No. 177, Section (a), were employed to fill vacancies caused by regular employees being absent for a day at a time. None of these furloughed employees being used to fill day to day vacancies had met the requirements of Rule No. 177, Section (b), to be considered qualified carmen within the meaning of Rule 153. Increase in forces is not involved.

On September 30, 1957, Car Inspector Walter Sypien laid off 11:30 P.M. to 7:30 A.M. shift, west bound receiving yard. His position was filled by Richard Hay, a furloughed non-four-year car inspector, with a seniority date of April 3, 1956, on the non-four year car inspectors' seniority roster, and a helper's date of March 24, 1956. This date was time slipped by Car Inspector E. Zambrazycki.

On October 5, 1957, Car Inspectors Fred Ellis and Peter Ferensic laid off at the west bound receiving yards, 7:30 A.M. to 3:30 P.M. shift; their positions

same rate for October 5, 1957; R. Kirk be compensated at same rate for October 6, 1957; and other Car Inspectors be compensated at same rate for each violation subsequent to October 7, 1957, as mentioned in Section I above.

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 employe 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 question presented is whether the carrier violated the controlling agreement by assigning furloughed non-four-year carmen (holding seniority on the temporary mechanics' roster) to fill day-to-day vacancies created by regular carmen (mechanics) laying off, and when no regular carmen were on furlough. The employes used in those temporary assignments were originally promoted or hired to fill permanent mechanic positions in accordance with Rule 177 (a), since the Carrier had been unable to employ sufficient carmen with four years' experience. At the time of their promotion or hire the subject employes were placed on a temporary mechanics' roster in accordance with Rule 177 (d). Pursuant to a subsequent reduction in force they were furloughed in line with their seniority on this roster, as prescribed in the same rule. Nevertheless they continued to retain seniority on said roster, as shown by Employees Exhibit B. At the time of furlough these employes had not acquired sufficient experience to become qualified for the regular mechanics' roster.

In protesting the Carrier's action, the Organization relies upon Rule 177 (c), which states in pertinent part that in the application of Rule 177 (a), "regular apprentices, helper apprentices and helpers will not be promoted, and men experienced in the use of tools will not be employed, except on a permanent basis." It is evident, however, that no promotion took place at the time that the furloughed temporary mechanics were recalled to fill temporary vacancies in carmen positions. Promotion occurred at the time of the original upgrading for the purpose of filling a permanent mechanic position. Likewise, none of these men were "employed" within the meaning of Rule 177 when they were used to fill the subject day-to-day vacancies. The term "employed" as used in this rule means "hire", not "recalled". Thus these men had been "employed" at a prior time and were simply being recalled from furloughed status as temporary mechanics.

Under the confronting facts we find no violation of Rule 177(c). Since no regular carmen were on furlough on the dates that the subject temporary mechanics were recalled to fill day-to-day vacancies, the disputed action of the Carrier was not barred by the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION
ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 27th of September 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3547

The majority in the instant findings has ignored the most important fact in this dispute (as evidenced by Employees' Exhibit B), namely that none of the employees used to perform the work involved were "qualified carmen" within the meaning of Rule 153 and therefore possessed no seniority rights to work in the place of qualified carmen laying off. There is no rule in the agreement which permits the carrier to use non-qualified mechanics in the place of qualified mechanics laying off. Rule 1(k) only permits the management to call furloughed mechanics (qualified under Rule 153) to work in the place of mechanics laying off.

The majority's statement that "The term 'employed' as used in this rule (Rule 177) means 'hired'" shows confusion in the use of these terms as applicable here. "Employed" implies use of a person's service; "hired" stresses the act of engaging the services of a person for compensation. Thus the non-qualified mechanics were originally hired as men experienced in the use of tools but the carrier here used their services to temporarily perform work belonging to qualified carmen in violation of Rule 177(c) which prescribes that in the application of section (a) of Rule 177 men experienced in the use of tools will not be employed (use made of their services) except on a permanent basis. Thus the instant action of the carrier was barred by the agreement.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Lobey

James B. Zink