Award No. 3929
Docket No. 3669
2-NONE-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling Agreement the Carrier improperly used furloughed Carmen to perform the work on established positions while the regular assigned occupants of these positions were performing work of the craft elsewhere as instructed by the Carrier on July 18, 19, 20 and 21, 1958.

2. That the Carrier be ordered to additionally compensate Carman E. L. Ray for eight (8) hours' pay at rate of time and one-half for July 18, 1958, Carmen J. V. McAllister, R. S. Gamlin and R. A. Hitt eight (8) hours' pay each at rate of time and one-half for July 19, 1958, Carman R. E. Crawford eight (8) hours' pay at rate of time and one-half for July 20, 1958, and Carman C. H. Welch eight (8) hours' pay at rate of time and one-half for July 21, 1958.

EMPLOYES' STATEMENT OF FACTS: At Meridian, Mississippi, the carrier maintains a repair shop and train yard where carmen are employed, including the above named employes, hereinafter referred to as the claimant. Carrier also maintains a derrick at Meridian, Mississippi, and carmen in the shops and/or trainyard, as a part of their regular assignment, are assigned by the carrier to man the derrick.

On July 18, 19, 20, and 21, 1958, Carmen J. L. Carter, L. J. Mott and J. W. Cumberland, in the performance of their regular assignment were ordered to clear a wreck located several miles south of Meridian.

During the four days involved, the carrier called in laid off Carmen W. C. Jenkins, A. H. Miller, Jr., and G. E. Rawson to work in the train yard

extra and relief work on vacancies, or work not subject to bulletin or during the life of any bulletin or pending assignment thereunder.

Note No. 1 under Article IV, insofar as carmen are concerned, restricts performance of work by furloughed carmen to "relief work on regular positions during absence of regular occupants, provided such employes have signified in the manner provided in paragraph 2 hereof their desire to be so used."

Messrs. Jenkins, Miller and Rawson had complied with paragraph 2 of Article V of the Agreement of August 21, 1954. They had notified the proper officer of the carrier in writing, with copy to the local chairman, that they would be available and desired to be used for relief work.

The next question is, did Messrs. Jenkins, Miller and Rawson perform relief work on regular positions during the absence of regular occupants. The answer is obvious. That is precisely what they did, because there was no other work available. Messrs. Cumberland, Mott and Carter were the regular occupants of the positions, and they were absent therefrom performing wrecking service. During such absence, Messrs. Jenkins, Miller and Rawson, who had applied for relief work, were available on the days here involved and were accordingly used.

That Messrs. Jenkins, Miller and Rawson were utilized in the performance of relief work on regular positions during absence of regular occupants was conceded by the brotherhood's general chairman in appealing the claim and demand to carrier's assistant director of labor relations. The penultimate paragraph is particularly significant. The letter clearly acknowledged the fact that the only work available was relief work on regular positions during absence of regular occupants, and that was the only work performed by furloughed Carmen Jenkins, Miller and Rawson.

No language in Rule 11, or any other rule of the agreement in evidence, obligated the carrier to call and utilize the claimants in performing relief work on regular positions during absence of regular occupants, as here alleged by the brotherhood.

Furloughed carmen not having been improperly utilized in performance of relief work on established positions while the regular occupants were absent performing wrecking service, and claimants not having a contract right to be called and utilized in performing such relief work at the punitive rate, the Board cannot do other than make a denial award.

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.

Article IV, Section 1 of the Chicago Agreement of August 21, 1954, as limited with reference to this Organization by Note 1, is as follows:

"The Carrier shall have the right to use furloughed employees to perform * * * relief work on regular positions during absence of regular occupants * * *."

The Employes' position on the property was as follows:

"Article IV of the August 21, 1954 Agreement permits the use of furloughed employes to fill regular position when occupants of said positions are absent, but it does not permit the use of furloughed employees to fill positions when regularly assigned occupants of said positions are on duty performing work of the craft in compliance with instructions of the Officer in charge.

"If it were necessary to fill the positions of Carmen Carter, Mott and Cumberland in the train yard at Meridian while these men were performing wrecking service work, you should have called men from the overtime board to fill the positions instead of using furloughed men to fill said positions."

The argument is that the regularly assigned occupants of the regular positions at Meridian were not absent, since they were "on duty performing work of the craft in compliance with instructions of the Officer in charge". But that is not the question under Article IV. The question is whether they were absent from their "regular positions" while out of Meridian on wrecker service.

Carmen assigned to wrecker service have a dual status. Under Rule 152 wrecking crews are composed of regularly assigned carmen; but their service on wrecking crews is intermittent. Therefore they are also regularly assigned to regular positions, — in this instance regular third shift carmen positions at Meridian.

While working in their regular third shift positions they would not be absent from their wrecker service, for it was inactive; but while working on wrecker service they certainly were absent from their regular third shift positions, and the filling of those positions constituted "relief work on regular positions" as authorized for furloughed employes by Article IV.

It is also argued before this Board that the use of these furloughed men who had registered their availability for this special service under Article IV constitute an increase or restoration of forces, and was properly governed by Rule 26, which gives preference to senior laid off men "if available within a reasonable time". By an agreed interpretation of the rule "reasonable time" means five days after notice, so that it cannot possibly be intended to apply to purely temporary situations like this. Furthermore, this claim is not by senior laid off men; it is by regularly assigned employes claiming the right to overtime work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.

DISSENT OF LABOR MEMBERS TO AWARD 3929

The three members of the wrecking crew each hold a regular position in which they are subject to serve either as an inspector or as a member of the wrecking crew; therefore while they were filling one phase of their assignment they could not be considered to be absent from their regular position. Assigning fourloughed employes to perform one phase of the regular employes' work augmented the force and in reality resulted in the performance of extra work. Note 1 under Article IV eliminates its applicability to extra work:

> "In the application of this rule to employees who are represented by the organizations affiliated with the Railway Employees Department, A. F. of L., it shall not apply to extra work."

The present findings and award display lack of understanding of the meaning of Note 1. It is irrefragable that Article IV is not applicable to the work subject of this dispute and the present findings and award are therefore erroneous.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink