Award No. 3972
Docket No. 3723
2-C&O-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. 41, RAILWAY EMPLOYES' DEPARTMENT, A. F. L.-C. I. O. Carmen

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region and Hocking Division)

DISPUTE: CLAIM OF EMPLOYES: That on February 4, 1959, the Carrier violated the controlling agreement, when F. G. Wright, Carman who had no seniority at Russell Terminal, was called and worked 3rd shift, 11 P. M. to 7 A. M. on said date, Russell Terminal, C&O Railway, Russell, Kentucky.

EMPLOYES' STATEMENT OF FACTS: At Russell, Kentucky the Chesapeake and Ohio Railroad Company, hereinafter referred to as the carrier, maintains a car shop and a terminal repair track. The carrier employs carmen at each, with the seniority rights of carmen confined to the point at which employed. F. G. Wright is employed at the Russell Car Shops, and is shown on the seniority roster covering carmen employed at Russell Car Shops.

Carman F. G. Wright does not hold seniority rights at the terminal repair track, and his name is not shown on that seniority roster.

On February 4, 1959 J. W. Preston, a carman who is employed at the Russell Terminal, on 11 P. M. to 7 A. M. shift was absent from work.

Carrier's general car foreman asserted that Carman Wright has signed up for relief work at the Russell Terminal repair track. The local chairman was never given a copy. Upon being so informed by the general foreman, the local chairman protested and called to the Foreman's attention the fact that to proceed in such a matter would result in a violation of the agreement. The carrier's general foreman, nevertheless, called in F. G. Wright for eight (8) hours on February 4, 1959 to work the position of carman Preston.

This dispute was handled by the local chairman in a letter directed to the general car foreman dated February 14, 1959. The general car foreman did not reply, but the carrier's master mechanic replied under date of March 24, 1959.

After appeal by the general chairman, the carrier's vice president labor relations replied under date of May 8, 1959. Subsequently, a conference was held, at which time the carrier confirmed its declination to adjust this dispute.

for such work. The rule did not further restrict carrier by confining an employe to work at his home point only.

The Emergency Board which made the recommendations which ultimately resulted in our Rule 27½ stated that such a rule would remove the necessity for overtime for regular employes and would help reduce unemployment of furloughed employes. Such was the case in the instant claim. It will be seen that carrier's application of the rule is strictly in line with the intent of the findings of the Emergency Board.

The claim of the employes is without merit and should be denied in its entirety.

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 Claim is that "on February 4, 1959, the Carrier violated the controlling agreement, when F. G. Wright, Carman who had no seniority at Russell Terminal, was called and worked 3rd shift" there.

He was on furlough from his own seniority district, the Russell Car Shops, and pursuant to his notice of desire to perform relief work at Russell Terminal, was used there under paragraph 1 of Rule 27½, which provides as follows:

> "1. The Carrier shall have the right to use furloughed employes to perform extra work, and 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. This provision is not intended to supersede rules or practices which permit employes to place themselves on vacancies on preferred positions in their seniority district, it being understood, under these circumstances, that the furloughed employe will be used, if the vacancy is filled, on the last position that is to be filled. It is also understood that management retains the right to use the regular employe, under pertinent rules of the agreement, rather than call a furloughed employe."

With reference to these Employes, Note 1 under this rule eliminates its applicability to extra work, and limits it to relief work.

Thus, furloughed employes signifying their willingness can be used in "relief work on regular positions during absence of regular occupants," without interference with the Carrier's right to use a regular employe instead, or with the rights of "employes to place themselves on vacancies on preferred positions **in their seniority districts,** * * *." (Emphasis ours).

In its submission Carrier states:

> "Prior to November 1, 1954, any furloughed employe called in at his home point to fill a temporary vacancy or to augment the force was given 4 days' notice before again being furloughed. This principle was also applied to employes filling vacancies or augmenting forces at points at which they held no seniority."

After quoting that statement in their Rebuttal the Employes say:

> "Here again the Carrier clearly admits that the practice was that 4 days' notice would be given such employes before they were again laid off. While that practice was changed by Rule 27½ as it applies to certain laid off employes called in for relief work at the home seniority point, **there was no change in regard to employes temporarily working at points other than where they held seniority rights.**" (Emphasis ours).

Thus the Employes do not deny that before the adoption of Rule 27½ employes were "filling vacancies or augmenting forces at points where they held no seniority rights," as well as within their own seniority districts. On the contrary, they admit that this practice then existed and was not changed. For after agreeing with the Carrier "that the practice was that 4 days' notice would be given such employes before they were again laid off", they state that "while that practice was changed by Rule 27½ as it applies to certain laid off employes called in for relief **work at the home seniority point,**" (emphasis ours), "there was no change in regard to employes temporarily working **at points other than where they held seniority rights.**" (Emphasis ours).

That contention can only mean that Wright could properly have been used for relief work at Russell Terminal if he was then given the four days' notice of lay off, — in other words, that he could have been used for four or more days, but not for less than four, so that his use for only one day was a violation of the Agreement. This really turns the claim into one for failure to give the four days' notice, since it relates, not to the relief assignment itself, but to its subsequent termination; that question properly relates to Wright's interest. However, we shall consider the employes as claiming that Wright could not under the agreement properly be used for just one day, on the ground that Rule 27½ abolished the four days' notice requirement for service inside his seniority district, but not outside of it.

Nothing in Rule 27½ so provides and the only argument stated is that if not so construed the effect would be to amend Rule 31, which confines seniority to the employment point. Any possible validity of that contention is negatived by other rules which relate to temporary work outside of an employe's seniority point. The question, then, is whether despite the absence of an express exception in Rule 27½, it is thus limited.

No award is cited to the effect that Rule 27½ (adopted as Article IV of the Chicago Agreement of August 21, 1954, pursuant to Carrier's Proposal No. 6 and an Emergency Board Report) relates to relief service within the furloughed employe's seniority district, but not outside of it.

Carrier's Proposal No. 6 was as follows:

> " Eliminate existing rules, regulations, interpretations or practices, however established, which restrict the right of a Carrier to require furloughed employes to perform extra and relief work."

In its report the Emergency Board said:

"The proposal would authorize Carriers to call furloughed em-employes to perform extra and relief work only when they have expressed a willingness to be so used, and to remove any restrictions in present existing rules in the agreements covering these employes, or awards of the Adjustment Board interpreting and applying them, that prevent their being used to perform such work. It is also intended that it shall eliminate any rules or awards of the Adjustment Board in interpreting and applying them which require notice to be given in such cases, the same as is required when regular or permanent jobs are abolished or forces reduced.

"The proposal would make it possible to give extra and relief work to furloughed employes, if they expressed a willingness to perform it, and remove any necessity of using regularly employed men on an over-time basis for that purpose. To do so would in no way harm the regularly employed men insofar as the work of their regular assignments is concerned. We certainly think that such an arrangement would be desirable and help remove some unemployment for these furloughed employes. It should, of course, be understood to have no application when furloughed men are recalled to regular duty. In that event all the present rules of the varoius agreements that are applicable in that situation should be retained, and such furloughed employes and Carriers should be required to comply therewith." (Emphasis ours).

Certainly the language of the proposal and the report was broad and without limitation or exception, and the rule as generally adopted was equally so except for provisions to protect the Carrier's right to use regular employes instead and the employes' right "to place themselves on vacancies on preferred positions in **their seniority districts**". (Emphasis ours).

Seniority districts were expressly mentioned in that one connection and they could also have been mentioned in connection with relief work if that had been desired.

By Note 1 this Organization did impose a limitation to Rule 27½ as to its members; but that was to exclude extra work. The further exclusion claimed could easily have been effected by adding to Note 1 some such words as these: "or to relief work outside of any employe's seniority district." When a provision is adopted with a specific exception, the only rational conclusion is that no other exceptions are intended. That conclusion is the basis for the well established rules of contract and statutory construction that "the specification of one thing is an exclusion of the rest," and that "an exception affirms the rule in cases not excepted."

A Memorandum of Understanding effective May 1, 1960 recognized the applicability of Rule 27½ to relief work outside of an employe's seniority district. Nt provided (Paragraph 1) that an employe who under certain circumstances declines such temporary vacancy **"at his home point"** will not, under certain conditions, be considered available for work under Rule 27½ **"at that or any other point."** (Emphasis ours). The Employes contend that the Memorandum of May 1, 1960 amended Rule 27½ "to the extent that a laid off employes could be considered available for work at points other than his home (seniority) point", but that it did not apply to this claim, since it

was adopted after this claim had arisen, and in any event was cancelled on September 1, 1960 and is of no present effect.

But the Memorandum did not amend the rule so as to permit the performance of outside relief work between May 1 and September 1, 1960. On the contrary, it expressly recognized the applicability of Rule 27½ to relief work both within and without seniority districts, and imposed specific limitation as to both. Its cancellation merely revoked those limitations as to both, thus restoring the full permissibility of both. It no more revoked the right to perform relief work outside of seniority districts than it revoked the right to perform relief work inside of them.

No violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3972

The statement of the majority that F. G. Wright was used in the present instance "pursuant to his notice of desire to perform relief work at Russell Terminal" is not in accord with the facts. The notice in question reads "I am a furloughed employe and desire to perform extra work and relief work on regular positions during absence of regular occupants." F. G. Wright held no seniority rights at the Russell Terminal seniority point and therefore the carrier violated the controlling agreement when it called him to perform the instant work. Rule 27½, cited by the majority, cannot be used to supersede Rule 31 which requires that "Seniority of employes in each craft covered by this Agreement shall be confined to the point employed * * *"

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink