

Award No. 4013
Docket No. 3841
2-CMStP&P-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly denied the following named employees of the Carmen's Craft at St. Maries, Idaho

H. A. Reynolds

J. B. Booth

E. R. Baldock

E. J. Stark

their contractual right to work on June 1, 1959 and each day thereafter that work was performed by employees from another seniority point, namely, Spokane, Washington.

2. That accordingly, the Carrier be ordered to compensate the above named employees eight (8) hours' pay for each day other employees were used to perform work at St. Maries from June 1, 1959 to July 29, 1959, inclusively, and eight (8) hours pay each for every day thereafter until the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, maintains a car repair point at St. Maries, Idaho. The carrier employed carmen at that point among whom were Carmen H. A. Reynolds, E. R. Baldock, J. B. Booth, and E. J. Stark, hereinafter referred to as the claimants, to perform car repair work.

Maries. There is, therefore, no basis for the instant claim and the carrier respectfully requests that it be denied.

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 waived right of appearance at hearing thereon.

The four Claimants were employed as carmen at the Carrier's St. Maries (Idaho) Car Repair Point and held seniority there. Effective as of April 15, 1959, the Carrier abolished all car department positions at this point. As a result, the Claimants were laid off. In June, 1959, the Carrier started to assign carmen from Spokane, Washington, to perform repairs on cars at the St. Maries Point on certain days.

The Claimants assert that they should have been used to perform said work. They claim eight (8) hours' pay for each day other employes were assigned to perform it.

1. The Carrier opposes the instant claim on the ground that it was submitted initially to the District General Car Foreman instead of to the Car Foreman as required under Article V of the National Agreement dated August 21, 1954. This argument lacks merit because the Car Foreman at St. Maries was also laid off on April 15, 1959, when he returned to Tacoma, Washington, where he held seniority as a carman. Under these circumstances, the only feasible procedure available to the Claimant to process their claim was to file it with the next higher official of the Carrier authorized to receive claims, the District General Car Foreman.

2. The Carrier raises another procedural objection. It argues that Committeeman Baldock rejected the denial of the claim in question by the District General Car Foreman in letters dated July 29, 1959, although the latter did not decline the claim until August 17, 1959. The record reveals that the date appearing in Baldock's letters was a minor typographical error and that his letters were actually written under date of August 21, 1959. Again, we are of the opinion that the Carrier's argument is without merit.

3. Rule 27 (d) of the applicable labor agreement provides, as far as pertinent, that "in the restoration of forces, employes will be restored to service in accordance with their seniority and shall be returned to their former position if possible." This rule clearly and unambiguously establishes a contractual obligation on the part of the Carrier generally to recall laid-off employes in conformity with their seniority rights if and when work of their craft is available at their seniority point. See: Awards 656 and 3818 of the Second Division. Our attention has not been called to any facts which would indicate that the Claimants' recall was not "possible" as contemplated in Rule 27 (d). Nor is there any contention that they were not available. Thus, the Carrier violated the Rule when it assigned carmen from another

seniority point to perform carmen's work at St. Maries during the period under consideration.

4. In support of its action, the Carrier relies on Rule 21 (a) of the labor agreement which provides, in part, that "employees temporarily transferred from one shop . . . to another, at the Company's request, will retain their seniority rights at the place being transferred from." The right of the Carrier temporarily to transfer employees in appropriate instances is not challenged by the Claimants. But this right may not be exercised so as to violate or nullify the contractual recall rights of laid off employees under Rule 27 (d).

5. For the above stated reasons, we are of the opinion that the instant claim is justified. Consequently, the Claimants are entitled to compensation of eight (8) hours' pay at the pro rata rate for each day on which the Carrier assigned carmen from Spokane, Washington, to perform work which belonged to the Claimants.

The parties are in disagreement as to the actual days on which such work was performed. The available evidence does not permit us to make a final determination of this issue. Moreover, the Carrier asserts in its rebuttal brief (p.3) that it discontinued assigning carmen from Spokane to St. Maries on September 23, 1959, in accordance with Rule 32 (a) of the labor agreement. Apart from the fact that the Organization contends that the date of discontinuance was October 1, 1959 (Organization's rebuttal brief, P.5), this matter was not discussed during the processing of the instant claim on the property. Accordingly, we hold that the case shall be returned to the parties for the purpose of determining the exact number of days for which the Claimants are entitled to compensation.

In the event the parties cannot reach an agreement, either party shall be entitled to re-submit the case to us for final disposition.

AWARD

Claim sustained in accordance with the above Findings without prejudice to the right of re-submission to this Division.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1962.