Award No. 4313

Docket No. 3914

2-T&NO-CM-'63

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. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas and New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, Car Inspectors Rueben Huff, Jr., and E. F. Trevino were unjustly dealt with when the Carrier denied them the right to work their bulletined assignment November 26, 1959.

2. That the Carrier be ordered to compensate Car Inspectors Rueben Huff, Jr., and E. F. Trevino at their regular rate of twelve (12) hours each in addition to what they were compensated November 26, 1959.

EMPLOYES' STATEMENT OF FACTS: Car Inspectors Rueben Huff, Jr., and E. F. Trevino hereinafter referred to as the claimants, are employed by the Texas & New Orleans Railroad Company, hereinafter referred to as the carrier, in the car department, Englewood Train Yards, Houston Terminals, Houston, Texas, with hours 3:00 P. M. to 11:00 P. M., North Bowl Yard with assigned days Thursdays through Mondays.

There are four units known as the North Bowl Yard, South Bowl Yard, the Crest (Hump) and Car Wash Tracks that car inspectors and carmen are assigned to by bulletin with regular assignments on three shifts around the clock. Prior to November 26, 1959, the carrier posted a Notice showing that several car inspectors' assignments were not to be worked and were blanked, some in the North Bowl Yard and some in the South Bowl Yard on account November 26, 1959 being a legal holiday—Thanksgiving Day. The two claimants were included in this notice that they were not to work as their assignments were blanked account of the holiday—November 26, 1959.

On November 26, 1959, Car Inspectors L. A. Parr and John Barfield were moved from their assignment in the South Bowl Yard and placed in the North Bowl Yard to work the assignments of the claimants that were supposed to

There can be no doubt that the carrier is privileged to use these employes in any part of the yard or terminal as needed.

When the Agreement of July 24, 1959, was written, the last sentence of that agreement was so composed to allow the carrier to work car inspectors anywhere within the terminal notwithstanding the fact that they may be primarily assigned to one particular work location. In order to emphasize that understanding, the last sentence of the agreement is reproduced herein:

> "It is understood and agreed car inspectors (carmen) working Holidays will perform work in Houston Terminals as the service may require under the September 1, 1949 Agreement."

In view of the crystal clear language, the carrier is at a loss as to the reasoning or theory in back of the employes' position. In correspondence the Organization contends that these claimants were displaced by senior car inspectors from another unit. The claimants were not displaced. They were not called for service on November 26, 1959. The organization has not shown a contractual requirement which would make the compensation claimed in this case payable.

It has been held on this property, in Second Division, NRAB, Award No. 3563 that a holiday is normally treated as an unassigned day. The employes involved in this dispute were, in effect, contending they were assigned to holiday work. The Second Division award referred to above between these same parties had this to say about holiday work:

> "If there is work to be performed on a holiday, the employe otherwise assigned on that day is entitled to it, but the carrier may blank the holiday without penalty. That claimant may have worked the holiday had he not been on vacation is immaterial where the record shows that overtime has not been contractually assigned to the position. The fact that bulletin of claimant's position was silent with respect to holiday work does not give rise to the inference that such work was a part of the assignment. A contractual undertaking to pay a penalty rate for a holiday not worked should be clear and unmistakable. The instant record contains no such showing.
>
> "AWARD
>
> "Claim denied."

We feel that the carrier's position in this case is amply sustained by the language of the agreements referred to in this submission. For that reason, a denial award is in order.

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 Claimants, R. Huff, Jr., and E. F. Trevino, have been employed as car inspectors at the Carrier's Englewood Yard, Houston, Texas. Said Yard consists of four separate units, among them the North unit and South unit. The Claimants have been assigned to the North unit.

Prior to Thanksgiving Day, 1959, the Carrier posted a notice that the Claimants were blanked on said day. As a result, they did not work and received no compensation. However, two other car inspectors, M. D. Barfield and L. A. Parr, who are assigned to the South unit, were not blanked on Thanksgiving Day and reported for work at said unit. After they had performed some work, they were transferred from the South unit to the North unit because of an unexpected heavy work load in the latter unit. They worked during the hours regularly assigned to the Claimants.

The Claimants filed the instant grievance in which they contended that the Carrier unjustly denied them the right to work their regular assignments on Thanksgiving Day, 1959. They requested compensation in the amount of twelve hours each at the pro rata rate. The Carrier denied the grievance.

The Carrier's basic right to blank certain car inspectors on a legal holiday, like Thanksgiving Day, is not challenged by the Claimants and thus not at issue here. The disagreement between the parties centers around the question as to whether the Carrier could validly blank the Claimants and, thereafter, assign two car inspectors from another unit to the North unit during the hours regularly assigned to the Claimants. In support of their claim, the Claimants primarily rely on a letter agreement, dated July 24, 1959, which reads, as far as pertinent, as follows:

> "2. If any assignments are blanked on Holidays at any of the four locations, Car Inspectors (carmen) who are affected, by shifts, by their assignment being blanked, will not be permitted to displace by the exercise of seniority any assigned car inspector (carmen).
>
> "3. . . . It is understood and agreed car inspectors (carmen) working Holidays will perform work in Houston Terminals as the service may require . . ."

A careful examination of the above agreement has convinced us that it does not sustain the grievance at hand.

The clear and unambiguous language of Paragraph 2 prohibits senior car inspectors, who are blanked on a holiday, from bumping junior car inspectors who are not blanked. It is undisputed that Barfield and Parr are senior to the Claimants. However, the record discloses that the former did not initiate their temporary transfer from the South unit to the North unit on the day in question. The transfer was made upon the instructions of the Carrier. Hence, Barfield and Parr did not exercise their seniority rights to displace the Claimants but were temporarily assigned to the North unit by the Carrier without any action on their part. Accordingly, Paragraph 2 of the letter agreement has no application to the facts underlying this case.

On the other hand, Paragraph 3 of the letter agreement explicitly permits the Carrier to assign work on holidays to car inspectors "as the service may require." The Paragraph does not limit such assignments to work within a specific unit but generally allows them consonant with the requirements of the service. This does not, however, mean that the Carrier is entitled arbitrarily to transfer car inspectors from one unit to another. It only means that the Carrier has the right to make temporary transfers, like the one here involved, for

good and valid reasons. In the instant case, the evidence on the record considered as a whole has satisfied us that the transfer of Barfield and Parr was caused by service requirements which were not foreseen. As a result, we are of the opinion that the Carrier's action was not arbitrary but reasonable and thus permissible under Paragraph 3 of the letter agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.