

Award No. 4479
Docket No. 4433
2-N&W-SM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier violated the current agreement, particularly Rules No. 28 and 30 by working J. W. Epperly, a furloughed pipefitter from Roanoke Shop, at Shafferscrossing Shop while pipefitters were furloughed at Shafferscrossing. Roanoke Shop and Shafferscrossing Shop are two distinctly separate seniority points.
2. That accordingly the carrier be ordered to compensate the following pipefitters employed at Shafferscrossing Shop at the applicable time and one-half rate as follows:

E. O. Obenshain	8 hrs. for September	2nd. 1961	3 P. M. to 11 P. M. Shift
R. H. McGhee	8 hrs. for September	3rd. 1961	3 P. M. to 11 P. M. Shift
H. W. Burrows	8 hrs. for September	5th. 1961	3 P. M. to 11 P. M. Shift
Gladly Hartley	8 hrs. for September	6th. 1961	3 P. M. to 11 P. M. Shift
James Maughn	8 hrs. for September	8th. 1961	3 P. M. to 11 P. M. Shift
R. M. Rorrer	8 hrs. for September	9th. 1961	3 P. M. to 11 P. M. Shift
E. L. Bishop	8 hrs. for September	10th. 1961	3 P. M. to 11 P. M. Shift
M. L. Obenshain	8 hrs. for September	11th. 1961	3 P. M. to 11 P. M. Shift
J. H. Leighton	8 hrs. for September	12th. 1961	3 P. M. to 11 P. M. Shift
H. W. Burrows	8 hrs. for September	18th. 1961	7 A. M. to 3 P. M. Shift
J. F. Blackard	8 hrs. for September	19th. 1961	7 A. M. to 3 P. M. Shift
Gladly Hartley	8 hrs. for September	20th. 1961	7 A. M. to 3 P. M. Shift
C. W. Gross	8 hrs. for September	21st. 1961	7 A. M. to 3 P. M. Shift

P. E. Parker	8 hrs. for September 22nd. 1961	7 A.M. to 3 P.M. Shift
R. H. McGhee	8 hrs. for September 24th. 1961	3 P.M. to 11 P.M. Shift
H. W. Burrows	8 hrs. for September 25th. 1961	3 P.M. to 11 P.M. Shift
J. F. Blackard	8 hrs. for September 26th. 1961	3 P.M. to 11 P.M. Shift
E. A. Scott	8 hrs. for September 27th. 1961	3 P.M. to 11 P.M. Shift
H. W. Burrows	8 hrs. for August 21st. 1961	3 P.M. to 11 P.M. Shift
J. F. Blackard	8 hrs. for August 22nd. 1961	3 P.M. to 11 P.M. Shift
C. W. Gross	8 hrs. for August 23rd. 1961	3 P.M. to 11 P.M. Shift
J. V. Flagg	8 hrs. for August 24th. 1961	3 P.M. to 11 P.M. Shift
James Maughn	8 hrs. for August 25th. 1961	3 P.M. to 11 P.M. Shift
J. E. Teague	8 hrs. for August 26th. 1961	3 P.M. to 11 P.M. Shift
James Maughn	8 hrs. for August 31st. 1961	3 P.M. to 11 P.M. Shift
J. E. Teague	8 hrs. for October 1st. 1961	7 A.M. to 3 P.M. Shift
H. W. Burrows	8 hrs. for October 2nd. 1961	7 A.M. to 3 P.M. Shift
J. F. Blackard	8 hrs. for October 3rd. 1961	7 A.M. to 3 P.M. Shift
E. A. Scott	8 hrs. for October 4th. 1961	7 A.M. to 3 P.M. Shift
Glady Hartley	8 hrs. for October 5th. 1961	7 A.M. to 3 P.M. Shift

EMPLOYEES' STATEMENT OF FACTS: At Roanoke, Virginia, the Norfolk and Western Railway Co., hereinafter referred to as the carrier, maintains a heavy repair shop known as the East End Shop and a running repair shop known as Shaffers Crossing Shop. Carrier employs sheet metal workers at each shop with seniority rights confined to the shop where employed. Sheet Metal Worker J. W. Epperly is employed in the Roanoke East End Shop and holds seniority as a sheet metal worker only at the East End Shop.

J. W. Epperly was furloughed from the Roanoke East End Shop on May 8, 1959. On August 16, 1960, while three sheet metal workers were furloughed from the Shaffers' Crossing Shop, carrier urged and permitted J. W. Epperly to sign up for and be used as a furloughed relief worker at Shaffers' Crossing Shop.

Subsequent thereto, the sheet metal workers employed and holding seniority at Shaffers' Crossing Shop deemed Carrier's action in using J. W. Epperly as a furloughed relief worker at Shaffers' Crossing, where he held no seniority, to be in violation of the controlling agreement. Accordingly, on August 17, 1961, Local Chairman M. L. Obenshain, notified General Foreman D. S. Haga, that it was the opinion of the sheet metal workers that J. W. Epperly was being worked in violation of the agreement, and requested that the practice be discontinued, as evidenced by copy of statement dated August 18, 1961.

Carrier's general foreman failed to discontinue the practice as requested and thereafter formal claims were filed with carrier for each date (specified in Part 2, Claim of Employees) on which J. W. Epperly was worked as a furloughed relief worker, in behalf of a sheet metal worker regularly employed as such and holding seniority at Shaffers' Crossing Shop.

not hold seniority. Such principle is recognized throughout the agreement. Article IV of the August 21, 1954, agreement does not restrict carrier by confining an employe to work at his home point only.

The emergency board which made the recommendations which ultimately resulted in Article IV of August 21, 1954, agreement 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, as furloughed Pipefitter Epperley had not been able to secure outside employment and was in need of a job. 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 carrier respectfully requests that it be denied.

Without prejudice to carrier's position that this claim is entirely without merit, it should be pointed out that this claim has been made for time and one-half on behalf of regularly assigned pipefitters. These pipefitters were fully paid for the time they worked on their regular assignments, and certainly they had no right to furloughed relief work. The employes, themselves, have contended that the furloughed employes at Shaffers' Crossing should have been called first. There was no loss or damage to the claimants and the agreement does not provide for any arbitrary or penalty for this alleged violation. (See Second Division Awards Nos. 3967, 3672, 2722, 1638.) Further, there can be no justification for time and one-half, as your board has ruled many times that pay for service which is not performed is at straight time rate. (See Second Division Award No. 3932.)

All of the aforesaid in this statement has been a matter of discussion and correspondence between the Employes and the Carrier.

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 Division is here called upon to determine whether a furloughed employe from seniority point "A" may properly be used for relief work at seniority point "B", where he holds no seniority, at a time when there are furloughed employes at point "B".

The Division finds that the Carrier did not contravene the appropriate provisions of the relevant agreements when it used Mr. Epperly, the furloughed worker from seniority point "A" at seniority point "B" where he held no seniority, at a time when there were furloughed workers on the seniority register at point "B".

The Division further finds that Article IV of the August 1954 Agreement, subsequently enacted to Rule 30 of the Agreement of the parties, has modified aforementioned Rule to the extent that relief workers, who indicate desire to do relief work, may be used without regard to the territory or point where they have earned and do carry their seniority. There is nothing in the language of the subsequently enacted Article IV to suggest that the right of the furloughed worker to do relief work was limited to the territory where he had earned his seniority. The parties to the 1954 Agreement were competent to limit the operation of the Agreement if they had wanted to, and this is evidenced by the fact that they specifically excluded extra work from its operative provisions. The well known canon of construction that the naming of one thing is the exclusion of the other has applicability to interpreting Article IV in light of Rule 30.

The Division's finding is further buttressed by the statement of the Organization that even before 1954 furloughed employees were used for temporary work at points other than where they had earned their seniority, but this was confined to situations where there were no available furloughed employees. (See Organizations' Rebuttal Statement, page 1.)

The Division is constrained to hold that there were no furloughed employees "available" at point "B" other than the one employee there who signed up for relief work and was so used by the Carrier. The other furloughed employees who did not indicate their interest and desire to work in accordance with the provisions of Article IV were not furloughed employees "available" for relief work. This finding is supported by the fact that the claimants in this matter are not furloughed, but, rather, regularly employed employees from point "B".

In summary, the record indicates that in the past furloughed employees from one seniority point have been used for temporary work at a point or points where they enjoyed no seniority; that the canon of construction applied in construing Article IV against Rule 30 does not limit the aforementioned Article only to the territory where the furloughed worker seeking relief work enjoyed seniority; and that a furloughed worker is not an "available" worker for relief work until he has indicated his desire therefor by complying with the appropriate provisions of the relevant agreements. In view of the foregoing, this Division has no recourse but to deny the cognizant claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.