

Award No. 4668

Docket No. 4517

2-B&OCT-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

I. (a): That the Baltimore and Ohio Chicago Terminal Railroad violated the rules of the current Agreement, particularly Rules 18 and 86, when it used provisional mechanics to perform carmen's work commencing May 6, 1962, while carmen J. Gaik, D. Leshko, and B. Martin were furloughed from its services.

(b): That the Baltimore and Ohio Chicago Terminal Railroad be ordered to compensate Carmen J. Gaik, D. Leshko, and B. Martin at the applicable straight time rate for every day that it used provisional mechanics to perform carmen's work, commencing May 6, 1962, and for as long as they are so used while said claimants are furloughed from service.

II. (a): That the Baltimore & Ohio Chicago Terminal Railroad improperly imposed car inspecting qualifying requirements when it advertised for carmen positions Nos. 150, 151, 152, and 153, bulletin No. 28 dated April 16, 1962.

(b): That the Baltimore & Ohio Chicago Terminal Railroad Company be ordered to bulletin positions Nos. 150, 151, 152 and 153 in the usual and customary manner.

EMPLOYEES' STATEMENT OF FACTS: The Baltimore & Ohio Chicago Terminal Railroad, hereinafter referred to as the carrier, maintains an inspection light repair track facility at Barr Yard, Blue Island, Illinois, where it employs a substantial work force of carmen and some provisional carmen, some of whose duties are inspecting cars, and two carmen helpers.

Carmen J. Gaik, D. Leshko, and B. Martin, hereinafter referred to as the claimants, are shown on the current seniority roster South of 95th Street, Chicago, which covers the Barr Yard employees.

elect to do so. Certainly there is no agreement violation when a senior man, who is admittedly not qualified, is furloughed while junior promoted helpers, who are qualified, are permitted to continue to work. In his letter of January 10, the General Chairman frankly admits that the claimants in this case " * * * are still, to my knowledge, not qualified to inspect cars, * * *." Suffice to say, when the claimants resumed duty on this property from furlough, they were not required to perform car inspecting duties.

The carrier submits that the claim in this case is without merit in both parts 1 and 2. The carrier submits that this claim in its entirety ought to be denied. The carrier requests that this division so rule and that the claim in its entirety 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 were given due notice of hearing thereon.

The Organization contends that at the time in question the Carrier violated Rules 18 and 86 of the current Agreement when it used provisional mechanics to perform carmen's work commencing May 6, 1962, while carmen Gaik, Leshko and Martin were furloughed from its service. Claim for compensation is made for these alleged violations on behalf of the named employes.

Carrier contends that neither Rule 18 nor 86 nor any other rules of the Agreement were violated and that none of the rules prohibit or limit the said Carrier's right to use promoted car helpers as car inspectors provided they are qualified car inspectors. In support of its contention Carrier calls attention to a letter dated September 26, 1962 written by General Chairman Stone to the Carrier's Manager of Labor Relations concerning the instant case. This letter, inter alia, contains the following statement:

"This Carrier has the right to impose qualifying requirements on carmen or promoted helpers who are expected to work as car inspectors."

Bulletin 28 from which this case had its genesis, advertised four car inspector jobs and concluded with the following statement:

"All applicants must be qualified car inspectors, able to make A Inspection of freight cars as per Circular F-18-P."

It is not argued that the Claimants were qualified car inspectors. They all had the opportunity to qualify as such but none of them took the steps necessary to meet this requirement.

It does not appear that the Carrier violated its Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.