

Award No. 4699
Docket No. 4504
2-CRI&P-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. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement Carman Harold Sharp, holding seniority rights at Silvis, Illinois was improperly assigned to perform Carmen's work at Rock Island, Illinois a separate seniority point, on May 26, 1962.

(2) That accordingly the Chicago, Rock Island and Pacific Railroad, be ordered to additionally compensate Carman H. E. Hudson, four (4) years pay for this violation.

EMPLOYEES' STATEMENT OF FACTS: At Rock Island, Illinois the Chicago, Rock Island and Pacific Railroad hereinafter referred to as the carrier, prior to May 26, 1962, maintained a force of nine carmen, consisting of two carmen on each shift around the clock, seven days a week. Carman H. E. Hudson, hereinafter referred to as the claimant, is regularly employed and holds seniority at Rock Island, Illinois as a carman.

On May 21, 1962 the carrier posted a notice abolishing five carmens positions and furloughing three Carmen at Rock Island, Ill.

On May 26, 1962, the same day the reduction in forces at Rock Island, Illinois was effective, the carrier sent carman Harold Sharp from Silvis, Illinois a separate seniority point some seven miles from Rock Island, Illinois to perform carmens work at Rock Island, Illinois.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective October 16, 1948, as subsequently Amended, is controlling.

POSITION OF EMPLOYEES: Effective May 26, 1962 the carrier reduced the forces at Rock Island, Illinois by one carman on each shift, leaving one carman employed on the 3:00 P. M. to 11:00 P. M. shift, one carman employed

POSITION OF CARRIER: The Master Mechanic recounts the facts of this situation and what has been done in the past in other emergency situations.

Nowhere in correspondence or in conference has it been refuted by the organization that in other emergency situations carmen have been sent from Silvis to Rock Island without claim or protest.

The carrier is aware of the point seniority provisions of Rule 27. The carrier is also aware of the principle that practice cannot change the clear provisions of a rule. However, the carrier is also aware that the parties have it within their power to determine an emergency situation and their actions in the past clearly classify the instant situation as being an emergency situation as established by long past practice.

The carrier does not deny that had it received ample notice prior to the arrival of train No. 9 at Rock Island on the date in question so as not to delay the train, it would have called a Rock Island carman. But the fact is the carrier did not receive ample notice and this is not denied by the organization.

Possibly there would have been no dispute arising out of this incident, but the organization appears to be seeking a form of reprisal because five car inspector positions were abolished at Rock Island, stating

“Had the forces not been reduced at Rock Island this situation would not have arisen.”

Actually the job abolishment had no relation to the shift involved here. As stated in Item 3 of the carrier's statement of facts on the claim date there were two carmen assigned to the second shift just as there had been before. Yet the organization admits had there been no job abolishment, even though it had no effect whatever on the instant situation, “this situation would not have arisen.” This to the carrier clearly denotes that the organization knows the carrier's action was proper and in line with past practice, but because an unrelated job abolishment occurred this claim constitutes the organization's method of reprisal.

The foregoing clearly shows this claim to be without merit and it should 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.

It is not disputed that the Carrier assigned Carman Harold Sharp, working at Silvis, Illinois and holding no seniority at Rock Island, Illinois to perform Carmen's work at Rock Island. Nor is it denied that by this action a Carman from another seniority district performed work which Rule 27 of the instant Agreement normally assigns to a Carman who holds seniority at Rock Island.

The Carrier admits that had it received ample notice prior to the arrival of Train No. 9 at Rock Island it would have called a Rock Island carman. The Carrier alleges that it did not receive timely notice and therefore the case at bar involves an emergency situation which Carrier asserts is the type of emergency established by long past practice. As proof of its contention the Carrier offers its Exhibit B which recounts the facts of this situation and what has been done in other instances involving emergency situations, when in emergencies, carmen have been taken from Silvis to Rock Island without protest by the Organization.

It is significant that the Organization has not sought to attack the correctness of the facts set forth in Carrier Exhibit B but instead has stated in its rebuttal that if this was done it was without the knowledge or consent of the Organization.

On the present state of the record we cannot say as a matter of fact that there was no emergency. Under these circumstances it would seem that the Carrier used a carman from another seniority district because it was faced with an emergency. Neither Award 665 nor 2680 cited by the Organization deal with emergency situations and are therefore not apposite.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.