

Award No. 4706

Docket No. 4540

2-GM&O-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. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the provisions of the current agreement Carman James Sipes was improperly used to perform extra work on June 3, 4, 5, 6 & 7, 1962.

2. That accordingly, the Carrier be ordered to make the regularly assigned Carmen whole by additionally compensating the following Claimants in the amount of eight (8) hours each at the time and one-half rate for the dates claimed.

J. W. Turner.....	June 3, 1962	A. M. Smith.....	June 6, 1962
C. A. Graves.....	June 4, 1962	E. L. Wyatt.....	June 7, 1962
W. L. Steward, Jr.....	June 5, 1962		

EMPLOYEES' STATEMENT OF FACTS: Carman R. E. Hunter resigned from service with the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Jackson, Tennessee on or about June 1, 1962. The position held by him at the time was on the third shift with a work week Sunday through Thursday.

In line with agreement rules, this vacancy was posted for bids and the senior furloughed employe notified to return to work or forfeit his seniority. Senior furloughed Carman L T McNinch notified that he would not return to work, and the next man in seniority order, N. P. Beck, was recalled and reported for work on or about June 18, 1962.

While this vacancy was being advertised and senior men notified, junior furloughed Carman James Sipes was called in and worked June 3 through June 7, 1962. There were no Carmen laying off for any reason.

Carmen Turner, Graves, Stewart, Smith and Wyatt, hereinafter referred to as the claimants, are regularly assigned at Jackson, Tennessee and were available to be used to perform overtime on the days for which claim is made in their behalf.

“When vacancies occur or new positions are created in the respective crafts, they will be posted . . .”.

With the resignation of Carman Hunter, a vacancy existed and it was posted for bid as required by the rule, and this in turn caused several other positions to be posted for bid.

Article IV of the August 21, 1954 agreement authorizes carrier to use furloughed employees to fill vacancies providing that such furloughed employees desiring to be considered available notify the proper officer of the carrier, with copy to the local chairman, that they will be available and desire to be used for such work. Carman J. H. Sipes had complied with the requirements of this Article and being the senior furloughed carman available to fill vacancies, he was called in and filled the vacancy caused by the resignation of Carman Hunter until such time as Carman N. D. Beck reported for service on June 18, 1962.

In progressing this claim on the property the general chairman of the carmen admitted that Carman Sipes was eligible to perform relief work under Article IV of the August 21, 1954 Agreement; but claimed that this was extra work, and that Article IV prohibited extra work and provides only that such employees could perform relief work on regular assignments. Carrier submits that this is not extra work, that the so-called extra work according to our rules and practices would be a new position, and that Rule 17 quoted above covers this situation. We either have vacancies or new positions. Obviously this was a vacancy caused by the absence of the occupant of a regular position. It was properly filled by the senior furloughed carman eligible to perform relief service until such time as the job assignment was made.

In protecting this vacancy until such time as General Rules 17 and 29 of the controlling agreement had been fully complied with, carrier very properly utilized the senior furloughed carman who was eligible to perform relief work and which action is in accord with the rules. The action is also in line with our past practice throughout the years.

The claims are without merit and carrier urges that they 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 employees 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 Organization contends that the senior furloughed Carman, J. H. Sipes, available to perform relief work was improperly used to fill a vacancy of a Carman at Jackson, Tenn., on the basis that this was “extra work”.

The Carrier takes the positions that the Claimants are regularly assigned Carmen at Jackson, Tenn., and were not available as claimed by the Petitioner. The work to be performed was not a new position. The question is whether it is a violation of the controlling Agreement for the Carrier to use a furloughed

employee who has complied with the requirements of Article IV of the August 21, 1954 Agreement to fill vacancies while they are being advertised for bid.

Carrier argues that this question has been before this Board many times, has been decided in the affirmative, and cites Awards Nos. 2297, 2300, 2301, 2612, 4574, 4479 and 4670.

The Carrier contends that furloughed Carman Sipes was used to perform relief work during the pendency of the bid period which was in accordance with the provisions of Article IV and that he was not an addition to the force on the dates set forth in the Petitioner's claim.

We agree that the Carrier has not violated Article IV or any rule of the controlling Agreement.

AWARD

Claims 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.