



Award No. 5689

Docket No. 5503

2-Pull-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. —C. I. O. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company violated the controlling agreement when they deliverately and arbitrarily recalled car cleaner Gertrude Mitchell from furlough, allowed her to work 8 hours (1 day) and again furloughed her without the seven calendar day notice required under the agreement.
2. That accordingly the Pullman Company be required to compensate Mrs. Gertrude Mitchell in the amount of four (4) days pay on account the violation.

EMPLOYES' STATEMENT OF FACTS: On June 25, 1966, Mrs. Gertrude Mitchell, hereinafter referred to as the claimant, was recalled from furlough by her employer, the Pullman Company, hereinafter referred to as the carrier, and was only allowed to work one day. At the end of the day they told her not to return to work the next day. They did not give her a furlough notice as required under the provisions of the controlling working agreement. The claim was filed with proper office of the carrier under date of August 9, 1966 contending that the claimant was entitled to a seven (7) calendar day notice, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective June 16, 1951, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that Rule 24, paragraph "H", of the current working agreement is controlling in the instant case—

"Employees restored to service will not be furloughed again without 7 calendar day's advance notice provided in this rule."

Nowhere in the agreement is there a rule that gives the carrier the right to recall a furloughed employee and then only work them for one day.

support the charge before making it, this Division of the Board is committed to the so-called 'burden of proof' doctrine. See Awards 3469, 5345, 5962, 6829, 6839."

CONCLUSION: In the ex parte submission, the Company has shown that on June 25, 1966, an emergency situation existed at Baltimore, which produced a far greater amount of temporary work than the one regularly assigned cleaner could perform even with overtime worked. Further, the Company has shown that Cleaner Mitchell was the first cleaner who might be given the opportunity to help out in the one day emergency by coming in from furlough. It is shown that she accepted the opportunity to work and came in without being given the formal advance notice of recall from furlough to assignment in a regular position. Also, the Company has shown that Rule 24 is inapplicable to the situation existing on June 25, 1966, at Baltimore because there was no restoration of an employee to service as comprehended by that Rule. Finally, it has been shown that the Organization's position in this case is merely a complaint or allegation without any supporting data and that the awards of the National Railroad Adjustment Board require the Organization to assume the burden of proof in presenting a claim for adjudication.

Inasmuch as it has not been shown that any violation of Rule 24 or of any other rule of the Agreement occurred in the emergency on June 25, 1966,
(Exhibits not reproduced.)
denied by the Second Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, Mrs. Gertrude Mitchell, classified as Cleaner, check #53, wants to be paid for four (4) days as constructive service in addition to her earnings for eight (8) hours worked by her on a temporary assignment June 25, 1966, after she had been furloughed in a reduction of forces pending restoration thereof.

Rule 24. Reduction or Restoration of Forces

- (h) Employees restored to service will not be furloughed again without the 7 calendar days' advance notice provided in this rule; however, a furloughed employee may accept employment temporarily to fill vacancies caused by regularly assigned employees being absent in such event the advance furlough notice provided in this rule will not apply. Employees desiring to fill such positions shall be used in seniority order. Furloughed employees declining such temporary employment shall not forfeit their seniority.

The undisputed facts are that Claimant was contacted by telephone in connection with Carrier being suddenly confronted with the need to clean eight (8) Pullman cars instead of the usual one (1) on the "Capitol Limited" at Baltimore, Maryland, arrival 12:00 noon, instead of scheduled arrival 9:45 A.M., for departure at 2:40 P.M., date in question, because of a derailment on line of road at Barnesville, Maryland, causing the "Capitol Limited" to be operated from Point of Rocks to Baltimore via Carrier's freight line. Claimant was offered the work opportunity.

Rule 24(a) through (h) is the agreed upon method for reducing forces when it becomes necessary to reduce expenses, and for the restoration to service of employees from the furloughed ranks as and when needed. The method fits into the system of seniority as practiced on the railroads.

Claimant's claim is predicated upon the contention that she was entitled to "the 7 calendar days' advance notice provided in this rule" in keeping with the provisions of Rule 24 (h).

She is mistaken. The "notice provided in this rule" refers to the language found in paragraph (b) of the rule, i. e. "not less than 7 calendar days' notice (inclusive of day notice is served) shall be given employees to be furloughed before a reduction in force is made (etc.)"

A reduction in force was not made in this case in accordance with paragraph (a), which provides:

"When it becomes necessary to reduce expenses, the force at any repair shop, district or agency shall be reduced, seniority to govern; the employees affected to take the rate of the job to which they are assigned."

The forces were not restored as provided in paragraphs (f) and (g).

If the language of paragraphs (h) appears to be slightly mystifying, it is so only because Claimant was called in for extra work and not "to fill vacancies caused by regularly assigned employees being absent and in such event the advance furlough notice provided in this rule shall not apply."

Article IV of the August 21, 1954 Agreement for eliminating existing rules, regulations, interpretations or practices, however established which restrict the right of a Carrier to require furloughed employees to perform extra and relief work was not adopted by this Carrier, and this Board would be taking undue liberties with Rule 24 if it should now undertake to confer the privilege upon the Carrier to require, or allow furloughed employees the right to perform extra and relief work, in addition to the right conferred by the rule "to fill vacancies caused by regularly assigned employees being absent."

On the other hand the Board is powerless to sustain a claim that has no support in rule or in established practice. Claimant was not "again furloughed." She was arbitrarily recalled and allowed to work as alleged, but she did not decline as she should have done, if she did not want to be cast in the role of a volunteer without recourse for claiming more than she has been paid for the service performed on the one day that she was needed.

The claim at issue is not made on behalf of a proper claimant.

A W A R D

Claims (1) and (2) dismissed without precedent, or prejudice to the Rule in dispute.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of April, 1969.