

Award No. 6143

Docket No. 5997

2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the Agreement of January 1, 1943, as subsequently amended when they refused to furnish Carman J. L. Morris, Jr., and forty-one (41) other employes furloughed on June 24, 1968, with time vouchers covering all time due within twenty-four (24) hours, from time furloughed.

2. That the Norfolk and Western be ordered to comply with the Agreement and furnish employes who are forced to leave the service due to furlough, time voucher covering all time due within twenty-four (24) hours, as provided for by Current Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company (formerly VGN) hereinafter referred to as the carrier maintains at Elmore, West Virginia, a point on its line, a shop track, and train yard and facilities for the inspection, servicing and repairing of cars, with the necessary force of carmen and helpers for effecting such operations.

During a furlough in the year 1968 certain upgraded helper carmen and apprentices were not cut back, but continued to work as furloughed relief workers under provisions of Rule No. 27½ of current agreement filling bona-fide carmen's positions who had been placed on furlough. Claim was filed for such furloughed carmen based on the premise that Section 3, of Supplement No. 50 of current agreement was violated in that such upgraded men had been retained in service on carmen positions while bonafide carmen were placed on furlough. Carrier declined such claims.

Contending that such upgraded men had been furloughed and therefore, were not retained in the service, stating as follows for ready reference:

"We further do not agree that Elmer Clark, J. A. Taylor, E. W. Dehart and Elgin Clark were retained in service. Bulletin No. 62(68)

vacation period, claimants are entitled to the additional half time rate provided for in Article I, Section 4." (Emphasis ours.)

In Award 4276 the carrier did precisely what the employees requested in the instant dispute and was stated to be in violation of the agreement by your board. It cannot be denied that "all time due" expressed in Rule 24(d) would have included not only vacation pay due for 1968, but also vacation pay for 1969. Having held in Award 4276 that the carrier erred in paying "time due" to furloughed employees at the time they were furloughed, your board cannot now rule that the carrier is in violation of the agreement for not complying with an identical request by the employees.

Carrier has shown that:

1. The employees are requesting your board to exceed its jurisdiction by prejudging the carrier in a hypothetical situation, since the instant claim has become moot.

2. Rule 24(d) is applicable only to those employees severing their relationship with the carrier.

3. Claimant Morris and forty-two (42) others retained their employee relationship with the carrier, were regular employees and not subject to Rule 24(d).

4. Your Board has sustained carrier's position through Award 4276.

Faced with these undeniable facts, your board is respectfully requested to dismiss the claim or deny it in its entirety.

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.

Carman Morris and forty-one (41) other employees of the Carrier were furloughed on June 24, 1968. Petitioners maintain that Carrier, by refusing to furnish Claimants with time vouchers covering all time due within (24) twenty-four hours from the time furloughed, violated the collective bargaining agreement, specifically Rule 24(d), which reads:

"d. Employees leaving the services of the Company will be furnished with a time voucher covering all time due within twenty-four (24), hours where time vouchers are used, and within sixty (60) hours at other points, or earlier when possible (Saturdays, Sundays and holidays excepted)."

Carrier contends that when an employe is furloughed, this does not con-
note the fact that he is "leaving the service." However that may be, the
evidence before us indicates that claimants have long since been paid by
Carrier for all work performed up to the time they were furloughed. Hence the
issue presented is now moot. It is not a justifiable case or controversy in its
present posture and we will accordingly deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.