Award No. 6206
Docket No. 6067
2-BN(CB&Q)-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

BURLINGTON NORTHERN, INC.
(Formerly Chicago, Burlington & Quincy Railroad Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman D. J. Matula, Alliance, Nebraska, has been unjustly denied his seniority rights when laid off in force reduction from October 25, 1969 thru April 29, 1970, while other employes junior in point of seniority were permitted to work.

2. That Burlington Northern Inc. unjustly and without cause neglected to properly apply the current agreement, Rule 20, thereby causing Carman D. J. Matula to be without work during the aforesaid period.

3. That accordingly the Burlington Northern Inc. be ordered to compensate Carman D. J. Matula for all time lost from October 25, 1969 thru April 29, 1970.

EMPLOYES' STATEMENT OF FACTS: At Alliance, Nebraska the Burlington Northern Inc., hereinafter referred to as the carrier, maintains a train yard for inspecting inbound and outbound freight trains, a repair track for repairing defective freight equipment, a cleaning track for cleaning, inspecting and commodity carding freight equipment, and a roundhouse for inspecting and performing minor repair to diesel locomotives.

Mr. Darwin J. Matula, hereinafter referred to as the claimant, was initially employed by the carrier on March 18, 1953 as a carman helper. Claimants work week was on first shift Monday thru Friday, with Saturday and Sunday as assigned rest days.

Shortly following March 18, 1953 (exact date unknown) claimant was upgraded from carman helper to carman-tentative, which required claimant to work as such for 1040 work days before he could qualify as a journeyman mechanic (carman).

In summarizing this necessarily lengthy submission, the following salient points stand out with unmistakable clarity, and reveal the fact that the claimant's loss of time between October 25, 1969 and April 29, 1970 was not due to any improper action on the part of the carrier:

1. The restriction on the claimant's services by reason of the malady with which he was unfortunately afflicted was entirely proper and in keeping with the Carrier's rights and responsibilities in evaluating the physical condition of its employes.

2. The claimant's separation from service on October 25, 1969 and subsequent loss of time was due in part to claimant's own misfortune, and in part to his own voluntary election to relinquish his Carman Helper seniority and establish seniority as a Carman.

3. The claimant's loss of time between October 25, 1969 and April 29, 1970 could have been minimized or eliminated entirely had the Organization earlier expressed a willingness to enter into agreement such as the one finally made on the latter date.

In the light of the complete record, the claim in this case is completely lacking in merit or contractual support and should therefore 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.

The basic issue before the Board is whether Carrier's action of placing Claimant in the status of restrictive service was proper and justified, and if not, what remedy should the Board fashion to make Claimant whole.

Claimant was laid off in reduction of force on October 25, 1969, but would have been laid off on October 7, 1969, but instead took his two-week vacation. Claimant was laid off from position he held on the cleaning track as a result of displacement by a more senior Carman. Physical restrictions placed on Claimant rendered him unable to hold a Carman's position.

Employe Exhibit C, letter of October 22, 1969 of Local Chairman to Master Mechanic sought lifting of restriction on Claimant by Carrier's Medical Department, or in the alternative, that Claimant be accorded the consideration provided for in Rule 20 cited as follows:

> "Employes who have given long and faithful service in the employ of the Carrier will, when they become unable to handle heavy work, be given consideration for such lighter work as may be available within their own craft when practicable."

Claimant was employed in 1953; has a service record of some sixteen years with an apparently unblemished work record; has worked himself up from Carman Helper to Carman-tentative, and ultimately to Journeyman Carman, this despite three outbreaks of a serious disorder which occurred in situations of extreme stress. Claimant's record in the face of his difficulty is impressive. Claimant is on regular medication which keeps his condition within control, except as otherwise noted above.

On April 30, 1970 Claimant returned to work pursuant to discussions between Staff Officer Dawson and General Chairman Robison on March 9, 1970 and April 28, 1970, and pursuant to a letter from the Vice President of Labor Relations to Organization Chairman, employe Exhibit N-5, which reflected an understanding reached between the parties to restore employe to work pursuant to Rule 20.

Carrier's defense for not doing in October 1969 what Carrier in fact did in April 1970, is that the local organization representative never sought disposition of this matter under Rule 20, and/or that the Organization gave no indication of a "willingness on the part of the employes to enter into any understanding affecting the seniority rights of the Claimant or other employes at Alliance" (Carrier's submission, page 14), and that Master Mechanic Baker would have so disposed of this matter at all times during its processing, had the Organization so posed the matter.

As previously noted, the Local Chairman's letter of October 22, 1969 sought disposition of this matter via Rule 20. Master Mechanic's letter of November 17, 1969, Employe Exhibit D, ignored said proposal for disposition. Employe's Exhibit E, letter of Local Chairman to Master Mechanic of December 2, 1969, repeats and elaborates on its original proposal for disposition of this matter via Rule 20. Employe's Exhibit F, Master Mechanic's December 16, 1969 letter, replying to Local Chairman, specifically rejects the Local's proposal for disposing of the matter as per Rule 20. Thus it is found that the record discloses emphatically, **and in fact**, that Organization did seek, **at the inception of this matter,** resolution of dispute via application of Rule 20, which Carrier rejected, and thus one major ground for Carrier's defense is found to be not solidly grounded.

Carrier further argues that while it was at all times willing to enter into agreement with the Organization to dispose of this issue via Rule 20, but it was barred from doing so because of the Organization's unwillingness to enter into any understanding respecting Claimant's seniority rights and the seniority rights of other employes, and that it could dispose of the matter pursuant to Rule 20, only when Organization indicated a willingness to enter into an agreement re seniority. Carrier states that it was put in such position finally by some action of the Organization. The Organization having so acted, Carrier contends that Carrier was then, and only then, in a position to develop a solution pursuant to Rule 20.

This Board is familiar with grievance disposition and the nature of discussion and negotiations that often surround grievance settlements, and it finds and concludes, after careful scrutiny of the voluminous record in this case, that Carrier's defense of its inaction between October and April, as summarized in the immediately preceding paragraph, is simply not grounded in the record of the correspondence between the parties. The Board therefore concludes that what Carrier did in fact in April, is what Carrier could have

and ought to have done in October, and that Claimant should not be required to bear the brunt and cost of Carrier's inaction of nearly six months.

AWARD

Claim sustained, and Claimant is to be made whole by an amount of compensation equal to the compensation he would have received from October 25, 1969 to April 29, 1970, minus whatever other earnings he may have received.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.

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