

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: ( System Federation No. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carman)  
( Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Chicago Terminal Railroad Company violated the terms of the current agreement when it failed to call Carman Dewey Stump for service July 19, 1972 to August 2, 1972.
2. That accordingly, said Company be ordered to compensate Carman Stump in the amount of eight (8) hours each day lost as a result thereof, a total of fourteen (14) days.

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.

Claimant Dewey Stump was employed by Carrier as a carman at Barr Yard, Riverdale, Illinois. On October 15, 1971 Mr. Stump was furloughed and under date of November 16, 1971 he filed written request for relief work at that point under the provisions of Article IV of the August 21, 1954 Agreement. Said Article IV reads in pertinent part as follows:

- "1. The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employes have signified in the manner provided in paragraph 2 hereof of their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in

"their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is to be filled. This does not supersede rules that require the filling of temporary vacancies. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee.

2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work. A furloughed employee may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier officers, with copy to the local chairman. If such employee should again desire to be considered available for such service notice to that effect - as outlined hereinabove - must again be given in writing. Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule. Furloughed employees so used will not be subject to rules of the applicable collective agreements which require advance notice before reduction of force."

On December 11, 1971 Claimant accepted employment as a carman with the C&O Railway Company at Rockwell Street, Chicago, Illinois, in which capacity he remained until August 3, 1972. During July 1972, two temporary carman vacancies occurred at Barr Yard due to illness and personal injury of two regularly assigned carmen. Carrier asserts and Claimant denies that he verbally was offered this relief work and declined same. In any event, the temporary vacancies were filled by Carrier on July 19 and 20, 1972 by hiring two new employees. On August 2, 1972 a permanent position opened up at Barr Yard with the retirement of a regularly assigned carman. Claimant was recalled to fill that vacancy and he thereupon resigned his employment with the C&O and returned to work for Carrier.

On August 20, 1972 the Organization on behalf of Claimant presented the instant claim for fourteen days' pay for the period July 19 through August 1, 1972 inclusive on the grounds that the hiring of new employees to fill the temporary relief positions violated his contractual rights. Specifically, Claimant alleges violations of Rule 18(g) and of Article IV of the August 1954, set forth supra. Rule 18(g) is a Restoration of Service rule which reads as follows:

"(g) In the restoration of forces, senior laid-off men including those who have waived their rights under paragraph (c) of this rule, will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former positions if possible. The local committee will be furnished a list of men to be restored to service."

Carrier bases its denial of the claim on several points. Insofar as Rule 18(g) is concerned, Carrier maintains that this case does not involve a restoration of services inasmuch as only a temporary vacancy on two existing positions were filled. In respect of the alleged Article IV violation, Carrier offers a two-pronged rebuttal: 1) Claimant orally withdrew his request for relief work upon accepting his C&O employment and orally declined an oral tender of the temporary vacancies on or about July 19, 1972 and 2) Claimant by necessary implication rescinded his written request for relief work by the act of accepting other employment with the C&O Railway Company on December 11, 1972.

Careful consideration of the record herein compels us to conclude that Rule 18 is not properly here invoked, inasmuch as no reduction in force is demonstrated on these facts. We have held on numerous occasions that filling a temporary vacancy is not a restoration of services. Awards 632, 1262, 1912, 3130.

Such finding however, does not obviate the claim for violation of Article IV. The issue presented therein is in most essentials the same as that presented in our earlier Award No. 5725 and we conclude that a similar resolution of the instant claim is warranted.

The record and the pertinent agreement provisions demonstrate that written withdrawal of the relief work request under Article IV is required. Carrier asserts that oral withdrawal was made by claimant but offers no proof of same. Claimant denies withdrawing his request. We cannot resolve this conflict in testimony but must stand on the express contractual provision and hold that absent a showing of written withdrawal or probative evidence on the record of other withdrawal, Claimant's request was still viable on July 19, 1972.

Carrier also asserts that Claimant verbally refused a verbal tender of the temporary relief assignments on July 19, 1972. Claimant denies such oral offer and refusal. We have carefully combed the record for corroboration of a refusal to accept such assignment but there is no such supporting evidence on the record.

Finally, Carrier argues that inasmuch as Claimant had a regular assignment on the C&O he was by necessary implication unavailable for relief work on Carmen assignments at Barr Yard. We conclusively resolved this point in our earlier award, holding that "Carrier could not presume what Claimant would do upon the contractually required offer of a Carman relief assignment. The election was contractually vested solely in Claimant." Award 5725. In all of the foregoing circumstances the claim must be sustained.

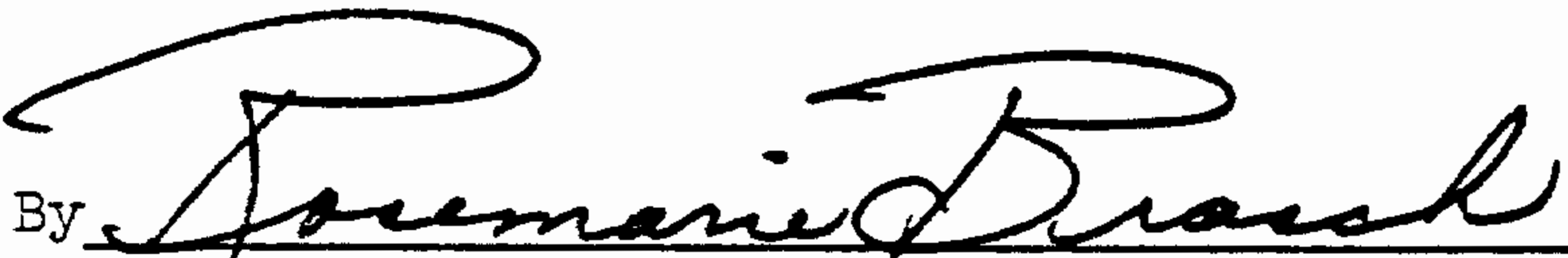
Without prejudice to its substantive case, Carrier submitted evidence to demonstrate that the claim for 14 days was excessive. In this connection the record shows that the temporary employee hired on July 19, 1972 worked a total of 10 days. This evidence is uncontroverted by Claimant and, accordingly, the claim will be sustained to the extent of 10 eight hour days.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1974.