

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

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Southern Pacific Transportation Company  
( Eastern Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated Rule 24 of the controlling agreement when they furloughed Carman L. V. Bach with a seniority date of August 21, 1978, while retaining in service Carman A. W. Moseley with a seniority date of September 1, 1978. Avondale, Louisiana.
2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman L. V. Bach in the amount of eight (8) hours per day at straight time rate on the following dates:

June 6-10-13-15-16-18-20-21-24-25-28-29-30 and July 1-2-4  
(holiday pay) -6-7-8-9-10-11-12-13-17-18-19-20-21-24-25-  
26-27-28, 1982.

The Employees also request that Carman Bach be compensated at Carman's overtime rate of pay for the following dates:

June 15, 1982 - 1 hour at overtime rate;  
July 1, 1982 - 2 hours at overtime rate;  
July 7, 1982 - 1 hour at overtime rate;  
July 8, 1982 - 1 hour at overtime rate;  
July 9, 1982 - 2 hours at overtime rate;  
July 10, 1982 - 1 1/2 hours at overtime rate;  
July 11, 1982 - 8 hours at overtime rate;  
July 12, 1982 - 1 hour at overtime rate;  
July 13, 1982 - 8 hours at overtime rate;

The above to be in addition to whatever Carman Bach was compensated on the above stated dates, if any, account of his being furloughed in violation of Rule 24 of the controlling agreement.

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 employes 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.

This claim arose after it was found necessary to correct the Carmen's Seniority Roster, Lafayette Division, New Orleans Terminal. During a conference held on the property on July 14, 1982 between the parties, a review of time keeping records and time cards was made and it was determined that the Claimant's seniority date should be corrected to read 8/21/78 rather than 9/11/78. A Letter of Agreement dated July 14, 1982 served to confirm the corrections made and on July 22, 1982, a corrected seniority list was published by the Carrier. The effect of this change was to move the Claimant from a standing of 48 to 46 on the Lafayette Division Seniority Roster.

On August 5, 1982, a claim was presented on behalf of the Claimant on the contention that he had been improperly furloughed on May 7, 1982, since he stands No. 46 on the Carmen Seniority Roster (as corrected on July 22, 1982) while another Carman who now stands Number 47 was held in service. Accordingly, the Organization asserts that the Claimant had been improperly furloughed in violation of Rule 24 of the parties' Agreement.


To begin, there is no evidence that the Carrier erred by intent. Under all the circumstances here, a violation of Rule 24 did not occur, since the Carrier's actions with respect to the Claimant were in accordance with his official seniority date at the time of his furlough. We do not find contractual support to re-establish retroactively Seniority Rosters. Accordingly, while seniority properly established does provide for an increasing equity in a right to preference, here a seniority date established and agreed to by the parties, prior to the events of the claim, does not establish what is claimed for the period before July 14, 1982. However, the Board concludes that the Claimant is entitled to eight hours of pay per day at the straight time rate for the dates subsequent to July 14, 1982. Those dates are July 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1982.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1985.