

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company violated the provisions of the current agreement, particularly Rules 25, 28 and 124 when they failed to recall the senior furloughed Carmen to service when restoring forces and failed to permit senior employees to displace junior employees who were recalled to work following the Brotherhood of Locomotive Engineers' strike.
2. That accordingly, the Chicago and North Western Transportation Company be ordered to compensate the below listed Carmen in the amount of eight (8) hours' pay for each day claimed.

<u>Carmen Claimants</u>	<u>Dates</u>
J. F. Gillaume	September 22, 23, 1982
T. J. Nuthals	September 23, 1982
A. Laimne	September 22, 23, 1982
R. Krurouski	September 22, 23, 1982
T. Sieler	September 22, 23, 1982
R. Gilson	September 22, 23, 1982
T. Fry	September 22, 23, 1982
P. Healy	September 22, 23, 24, 25, 1982
K. Tobin	September 22, 23, 24, 1982
G. Hendrickson	September 22, 23, 1982
R. J. Heiman	September 22, 23, 24, 25, 1982
J. A. Taylor	September 22, 23, 24, 25, 26, 1982
P. R. Gazella	September 22, 23, 24, 25, 1982
J. P. Schroeber	September 22, 1982

T. E. Lynch

September 22, 23, 24, 25, 1982

K. E. Gille

September 22, 23, 24, 25, 26, 1982

Carman Claimant

Dollar Amount

J. F. Gillaume	\$196.48
T. J. Nuthals	98.24
A. Laimne	196.48
R. Krurouski	196.48
T. Sielere	196.48
R. Gilson	196.48
T. Fry	196.48
P. Healy	392.96
K. Tobin	294.72
G. Hendrickson	196.48
R. J. Heiman	392.96
J. A. Taylor	491.20
D. R. Gazella	392.96
J. P. Schroeber	98.24
T. E. Lynch	392.96
K. E. Gille	491.20

8 hrs. @ \$12.28/hr. - \$98.24

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 arises because of a strike commenced by another union, not a party to this claim, on September 19, 1982. During the course of this strike the Carrier temporarily abolished many carman positions, including the positions held by the Claimants in Green Bay, Wisconsin. The Organization does not contest the temporary layoffs due to the strike, but rather objects to the order in which the carmen were recalled to duty.

As the strike ended the Carrier restored the carmen positions on a gradual basis from September 23rd through September 30, 1982. The Carrier contends that the carmen positions were restored gradually throughout this period as business resumed gradually after the strike. The Carrier acknowledges that it called the carmen back to their positions based upon when their jobs were restored, rather than on the basis of their seniority. Therefore certain junior carmen returned to work ahead of the Claimants here because the jobs held before the strike by the junior carmen were restored before those of the senior carmen. The Organization brings this claim on behalf of sixteen senior carmen who argue that they should have been allowed to displace the junior carmen in their jobs until the senior carmen's jobs were restored.

Rule 25 of the controlling agreement is the primary rule at issue here. The pertinent portions of that rule provide:

"Rule 25: When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per Rule 28 to govern;

....

In the restoration of forces, senior laid-off men will be given preference of re-employment, ... and shall be returned to their former positions....

....

When forces are reduced or jobs are abolished, men affected will be given the privilege to place themselves according to their seniority....

....

When jobs are abolished, (not under a reduction of force), for a period of six months or less, men affected by such abolition will be restored to their former position upon re-establishment of jobs...."

The language of Rule 25 does not directly address the issue presented here, in contrast to the agreement cited in Award 6545 relied upon by the Organization in its submission. Nevertheless, the Board concludes that the intent of Rule 25 was to give maximum protection to seniority rights when jobs are either eliminated or restored. Thus, the right to return to one's job embodied in Paragraph 7 must be read in conjunction with the language of Paragraph 5 of the Rule which states "when jobs are abolished, men affected will be given the

privilege to place themselves according to their seniority." On September 23, when the recall began, the situation was that a few jobs were being restored, but the majority of carmen positions were still abolished. Under the language of Paragraph 5, therefore, the men affected by the abolishment of the jobs, i.e. all the carmen, should have been given "the privilege to place themselves according to their seniority."

Under the Carrier's interpretation, if some of the carman positions had remained abolished permanently after the strike then senior carmen still would not have been able to displace juniors if the senior members' jobs were the ones which remained abolished. In fact, this is the situation that existed on September 23rd, when recalls began. This interpretation would subvert the obvious importance of seniority embodied in this agreement's treatment of lay-offs and recalls.

Furthermore, the language allowing an employee to return to his former position is subordinate to language protecting the rights of senior laid-off employees. Thus, in the paragraph primarily relied upon by the Carrier, the language stating that employees "shall be returned to their former positions" follows after language stating that "senior laid-off men will be given preference of re-employment." (Paragraph 3). The language giving preference to senior laid-off men would be meaningless and redundant if junior employees were to be returned to their former jobs ahead of senior laid-off employees. The "preference" language in Paragraph 3 allows the senior employees to displace junior employees once jobs become available and to claim their former positions when they are restored.

Lastly, there is nothing in the language of this section which requires the employees to inform the Carrier in writing that they desired to displace the junior employees. The agreement provides that the senior laid-off men automatically receive preference over their juniors, and there was no need for them to take affirmative action to assert this contractual right.

We do not concur with the Organization's claim for payment for the Claimants for September 22, 1982, however. The strike did not end until the second shift on September 22nd, according to the Carrier, and even if it had ended sooner on that day, the Carrier did not begin restoring jobs until September 23rd. Therefore, on September 22nd, all of the carman positions were still abolished; the senior carmen could not exercise their rights to displace junior carmen until the junior carmen's positions were recalled.

The Organization's reference to the federal law ending the strike does not change our position on this issue. The Organization here was not one of the "parties to the dispute" referred to in that law. Furthermore, the language of the law requiring a return to the status quo before the strike did not require an immediate return. Therefore, the Legal contentions raised are not within our jurisdiction.

Consequently, the Organization's claims will be granted, except for the portions involving payment for September 22, 1982.

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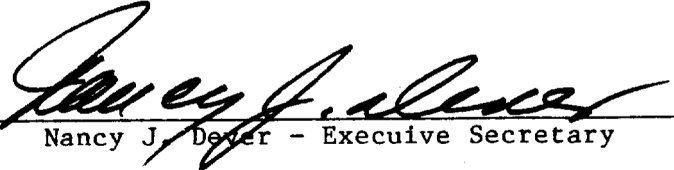
Award No. 10706
Docket No. 10529
2-C&NW-CM-'86

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 15th day of January 1986.