

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 27, 28, 94, 99 and 100 of the Shop Crafts Agreement and the 1975 National Agreement, Article 6, "coupling and air test", when on January 22, 1982 they furloughed all the Carmen that had seniority at Glenwood, Minn. and transferred the work to the Trainmen and Carmen from other seniority points.

2. That the Soo Line Railroad Company be ordered to compensate Carmen E. K. Anderson, E. T. Fingerson, S. J. Parrish, R. E. Pederson, T. C. Boelke, S. A. Sperstad, K. C. Swisher, H. L. Engelbretson, S. K. Sperstad, R. R. Anderson, G. A. Zenner, R. B. Hanson, A. S. Cooley, G. C. Cihlar and Gary Myron who were available and have seniority on the Carmen's roster at Glenwood, Minn. for 4699 hours at straight time, Carmen's rate for Carmen's work transferred to the Trainmen, 2 2/3 hours time and one-half for Foreman doing inspection of cars. 10 2/3 hours time and one-half for Section Foreman and laborers to rerail freight cars in Glenwood yards, 1274 hours at straight time and 332 hours at overtime for Carmen's work performed by Carmen from other seniority points, at Glenwood repair facility and areas where the Glenwood Carmen had historically performed Carmen's work. The above hours to be divided equally among the Carmen. Hours claimed were from January 22, 1982 and thru December 31, 1982. This being a continued violation by the Soo Line Railroad Company, record of further hours are being recorded and submitted until claim is settled."

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 employees involved in this dispute are respectively carrier and employees 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.

On January 22, 1982, the Carrier furloughed many of the Carmen on its system and all the Carmen at Glenwood, Minnesota. Because of this furlough and the later use of Carmen from other locations and Train and Engine Crews to

do at Glenwood, work that the Carmen had previously performed, the present Claims were filed.

The theory of the Claimants is that the ostensible reason for the furlough of Carmen at Glenwood, decline of business, is now and was perhaps previously a sham and that the work which was denied the furloughed Glenwood Carmen must be the basis of time claims for these employees. The Claimants rest their Claim on alleged violations of Rules 27, 28, 94, 99, and 100 of the Shop Craft Agreement and Article VI of the 1975 National Agreement.

The Carrier has consistently denied the Claims because 1) the furlough was proper because there was a decline in business, 2) absence of a Rule that requires it to use Carmen where there is insufficient Carmen's work to fill a shift, and 3) air hose coupling or air brake testing is not work exclusively reserved by agreement to the Carmen craft.

The voluminous record has many sheets of reports by the Organization purporting to record the volume of traffic into and out of the Glenwood facility. Each time one segment of this continuing report was filed with the Carrier, a Claim was made for the alleged time that should have been paid to the furloughed Carmen. The Claim was answered in a consistent manner by the Carrier which denied it on the grounds stated above.

This Board does not receive the Claims without guidance. Not only has it been furnished many previous Awards that touch on the same subject, it has also been furnished awards that relate to the same situation on the same Carrier and, in some cases, have essentially the same Claimants.

Many Awards have held that work of the nature claimed here will only fall exclusively to the Carmen of the Seniority District in which it was performed when certain conditions are met. Central to these Awards is one condition that Carmen have to be on duty when the work is performed. This is obviously what the Carrier is referring to in its letter to the General Chairman on July 9, 1982 when it stated:

"Your exception to the use of trainmen to perform the work of coupling, testing air and inspecting brakes is not valid. When Carmen are not available the work they perform is well within the time to indicate that the work is not sufficient to require Carmen. Additionally, their rules provide for their performance of the duties." (Emphasis by the Board)

Obviously the furlough of all the Carmen at the Glenwood seniority point created a condition whereby Carmen would not be available there. Of course, the inquiry of the Board cannot stop here. To do so would allow desecration of the rights of a craft through furlough no matter what the merits of the furlough.

The Award of Special Board of Adjustment, No. 570, Award No. 562, which concerned many of these same Claimants, has examined the issue and has

found that the decline in business had occurred. The detailed operating information furnished to this Board indicates that the systemwide decline in business was reflected in the decline in business at Glenwood. Carrier statistics show that local traffic had become practically nonexistent and that the diminished traffic flowing through Glenwood was primarily overhead traffic. The S.B.A. Award concerned job protection and was bottomed on the issue of decline in business.

Another Award, Second Division, No. 10591, held that furloughed Portal, North Dakota, Carmen in an identical situation as the Claimants here, were properly furloughed by the Carrier. It went on to hold that it had no authority to require the Carrier to reestablish a position, this being a management prerogative. It found that there had been no contractual violation of the rights of the Claimants in that case and denied all Claims.

We concur with the reasoning of the previous Boards in that a legitimate decline in business permits the Carrier to abolish as much of the craft as the decline so warrants. If the decline is enough to warrant a furlough of all the employees of the craft at the seniority point, there will obviously be no Carmen on duty to do work that would accrue to them under the Agreement if he was on duty, therefore members of another craft can do the work.

This cannot be the end of our inquiry. Many Awards, including several furnished us, have held that a furlough does not end the employment relationship and the contractual rights of the furloughed employees. If enough work has reappeared at the point to justify the Claim that a Carman should be recalled to fill a regular Carman position, the fact that he is not available to do the work does not furnish the contractual justification for depriving him of it.

The Claimants have furnished us reams of statistics showing the arrival and departure of trains at Glenwood. Appendaged to this is a statistical breakdown of the average time required of a Carmen to do certain kinds of work. These statistics are then applied to the train consists to determine the basis for the time of the Claim.

The Carrier has rebutted these statistics by demonstrating that trains have been double counted, that some trains require no inspection or air work, and that the statistics about the time of Claim are based on the assumption that all trains require the maximum work.

The burden of proof rests squarely upon the Claimants. It is their obligation to prove to this Board that there has been a violation and, if such be proven, furnish to us credible information to enable us to fashion a remedy. This has not been done. Because the statistics are not sufficiently precise, we are unable to determine if enough work that would normally belong to the Carmen is being done at Glenwood to require that a Carman do it. We hold, therefore, that the burden of proof has not been met and the Claims will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of March 1986.