

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11254
Docket No. 10865
2-CMSTP&P-CM-'87

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

Dispute: Claim of Employees:

1. That at the Milwaukee Freight Car Shop facility on November 7 and 8, 1983, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company violated the controlling Agreement when they recalled junior Carmen to positions that should have been given to Carman R. Rulf.

2. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be ordered to compensate Carman R. Rulf, in the amount of eight hours pay for each of the dates of the violation on November 7 and 8, 1983, and further compensate him for four hours pay at the time and a half rate for being made to travel 90 miles from Milwaukee, Wisconsin to Bensenville, Illinois, and back, each day of the violation.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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.

Claimant had established Carman seniority at the Milwaukee Freight Shop. Due to a furlough, the Claimant displaced a set-up Carman/helper at the Carrier's facilities in Bensenville, travelling round trip from Milwaukee, Wisconsin to Bensenville, Illinois to protect his assignment. On November 7, 1983, Claimant was recalled to the Milwaukee Freight Shop, but was not released to return to Milwaukee until he completed his tour of duty on November 8, 1983, in Bensenville.

The Organization argues that the Carrier has violated the Claimant's seniority rights as protected by Rule 27(d) and Rule 31(a) in that Claimant was not returned to service in Milwaukee, while junior employees were recalled "to the position that should have properly been given to the Claimant." In violating the Agreement the Claimant was forced to travel both days and also to work hours different from those which the Claimant would have been required to work in Milwaukee. The Organization requests compensation for the two days when Claimant was denied his seniority rights and further compensation for forced travel expenses.

It is the Carrier's position that no violation of the Agreement occurred with respect to either Rule 27(d) or Rule 31(a) in that the Claimant was recalled to his permanent position at the Milwaukee Freight Shop on November 7, 1983. However, as the Mechanical Superintendent-Shops indicated "due to operational requirements of the Bensenville facility...[Claimant] was not released to return to Milwaukee..." As such the Carrier complied with the Agreement. Inasmuch as Claimant worked the days of the Claim, the Carrier views the Claim for two days at the straight time rate of pay as an improper penalty Claim. The Carrier maintains that travel payment is improper and not Rule supported.

This Board has taken careful note of the Rules and facts in the case at bar. The cited Rules in dispute are Rules 27(d) and 31(a) which states in pertinent part:

"Rule 27

(d) In the restoration of forces, employees will be restored to service in accordance with their seniority and shall be returned to their former position if possible.

Rule 31-Seniority

(a) Seniority of employees in each craft and subdivision thereof covered by this agreement shall be confined to the point employed and begins at the time the employee's pay starts at the point in the craft or subdivision, thereof in which employed."

In our Interpretation of these Rules and particularly Rule 27(d), we note that the specific intent of restoration is to be restored. Such terminology means to be returned to a former or normal state. Claimant was "recalled" but not "restored." The probative evidence on property substantiates that the Carrier recalled the Claimant to his former position, but did not release him to return to Milwaukee and as such, he was not restored to service in accordance with seniority. While Rule 27(d) states that they "shall be returned to their former position if possible," we cannot construe such language as to allow the Carrier to consider the Claimant restored in "accordance with ...seniority" while not released to return. Carrier's arguments on property with regard to "operational requirements" are not contractually founded. This Board does not find Agreement support for restoring the Claimant to his position in Milwaukee, while holding him two days in Bensenville, as within the

meaning and intent of Rule 27(d) language. As such, Claimant's seniority rights were violated as junior employees were restored prior to the Claimant at the point employed (Milwaukee).

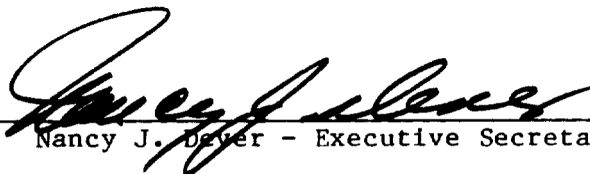
Having found that the Carrier violated the Agreement, the only issue to be resolved is compensation. As to the Claim for eight hours pay for the two days due to Claimant working different hours, the record indicates Claimant was fully employed on the dates in question. Carrier raises the well founded objection that this is a penalty Claim in that no wage loss has been suffered by the Claimant (Third Division Awards 17709, 16691, 15062). This Board finds in these particular circumstances that the Claimant has suffered a loss of working the scheduled hours of the position to which his seniority entitled him. Claimant was available to work those hours and was deprived of the opportunity to work. Given the importance of seniority and the fact that the Claimant has been seriously inconvenienced and effected by Carrier's violation, this part of the Claim will be sustained. With regard to travel, the Organization argues on property that Carrier violated Rule 12. The Carrier argues that Claimant's travel "was by his own choice." This Board does not agree. As such, the Claim for "traveling time and expense" is also sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 6th day of May 1987.