

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That the Denver & Rio Grande Western Railroad Company violated the controlling agreement, particularly Rules 27, 23 F-3, 99-8, when Carman Helper Barker was called and used to perform Carmen's work while himself and claimants, Carmen T. Meyers, J. Francis, J. Polhamus and M. Manning were furloughed due to a mud slide that closed the Carrier's main line.

2. That accordingly, the Denver and Rio Grande Western Railroad Company be ordered to compensate Carmen T. Meyers, J. Francis, J. Polhamus and M. Manning at the applicable Carman's rate of pay for an equal number of hours worked by Carmen Helper Barker on the following dates: April 19, 1983, T. Meyers; April 27, 1983, J. Francis; April 28, 30 and May 3, 1983, J. Polhamus and May 6, 1983, M. Manning.

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.

The Claimants were employed as Carmen at the Carrier's Grand Junction, Colorado facility at the time this dispute arose. On April 15, 1983, a massive mud slide closed the Carrier's main east-west line, and it remained closed until July 4, 1983. The Claimants, along with many other employes, were furloughed effective April 17, 1983, as was the sole Carman Helper assigned to this point.

Several days later the Carman Helper was recalled and worked on the dates in question. Although the Organization does not state exactly what

duties the Carman Helper performed, apparently he assisted several Carmen who were not furloughed, by driving a truck to enable the Carmen to perform certain Carman's road work. The Organization filed a Claim over this work, contending that the Carrier had violated the contract by recalling the Carman's Helper to perform this work ahead of furloughed Carmen, the Claimants in this case.

The Organization contends that the Carrier's action violated Rule 27 of the Agreement, the seniority provision. That rule provides for separate seniority both by craft and by class within the craft. The Organization does not deny that the Carmen Helper is on a separate seniority list than the Carmen in this seniority district. In addition, there are separate classification of work rules for Carmen Helpers and Carmen. Therefore, Rule 27 standing alone does not support the Organization's Claim.

Because there are separate seniority lists for Carmen and Carmen Helpers, the Organization could prevail only if it were able to establish that the Carmen had an exclusive right to the work in question, over the Carmen Helpers. Neither Rule 92 nor Rule 93 of the Agreement, which are the classification of work rules for Carmen and Carmen Helpers mention the truck driving which is the disputed work here. Therefore, unless the Organization were able to establish that the Carmen have exclusive jurisdiction to this work, under past practices and custom, they could not make an exclusive Claim to the work. The Organization has presented no evidence showing that the disputed work is solely within the jurisdiction of the Carmen. The burden of proving the Claim rests with the Organization, and they have not met the burden of this issue.

The rule most directly on point in the Agreement is Rule 96, covering road work, which states in relevant part:

"When necessary to repair cars on the road...a carman, and helper, if necessary, will be sent out."

This rule supports the view that Carmen and Carmen Helpers have different duties, and that a Helper may be sent out, if necessary, to help a Carman. Furthermore, it supports the view that the Carrier in the first instances, decides when a Carman Helper is necessary, although this decision is subject to some review through the grievance or Claim procedure, since it is included in the contract.

The other rules in the Agreement relied upon by the Organization do not support its position. For example, Rule 23(f)-3 provides that "furloughed employees" will be called for extra work "in seniority order." Since the Carmen and Carmen Helpers have different seniority lists, the Carrier did not violate this rule by calling the Carman Helper before other Carmen. The same rationale applies to Rule 23(c), which gives senior laid off employees preference in returning to service after a furlough.

The Organization also relies upon Rule 99-8 of the Agreement, which gives journeyman mechanics preference over upgraded Carmen Helpers in filling "bulletined mechanics positions." As the Carrier points out, the work at

issue here was not a bulletined mechanics position, and therefore the rule simply does not apply.

The Organization has failed to prove that the Carmen Claimants had an exclusive right to the disputed work. Nothing in the Agreement or in the parties past practice supports the view that the Carrier was required to recall furloughed Carmen before a furloughed Carman Helper to perform the disputed work. Therefore the Organization has failed to sustain its burden of proving the Claim, and the Claim must 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 30th day of September 1987.