

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated the controlling Agreement when on the date of December 29, 1982, they utilized furloughed employes under the provisions of Article IV, November 1, 1954 Agreement (Rule 24') at a derailment, in lieu of utilizing regularly assigned Carmen, employed in the Transportation Yard at Pittsburgh, PA., such action on the part of Carrier in violation of Rule 24 1/2 (a) and (c), Understanding, Effective December 1, 1972, Section 1, paragraphs (a) and (c).

2. That accordingly, Claimants herein be compensated for monetary losses incurred as a result of such violation, as follows: Carman P. M. McCurry, eight (8) hours pay at the time and one-half rate, December 29, 1982. Carman A. P. Kearns, five (5) hours pay at the time and one-half rate, December 29, 1982.

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.

At 7:00 A.M. on December 29, 1982, a twenty-two car derailment occurred on Carrier's main line near Pittsburgh, Pennsylvania. Initially, two Carmen assigned to Carrier's Glenwood Shops Repair Track were dispatched to work to clear the line. At approximately 10:00 A.M. it was determined that two additional Carmen were needed. Two Carmen, recalled from furlough, were assigned. They worked until 11:30 P.M. on December 29. The Organization contends that two Carmen, regularly assigned in the Transportation Yard at the time, should have been worked instead of the recalled Carmen.

The Organization bases its Claim on Rule 24 1/2. That Rule, effective November 1, 1954, with three notes and an Understanding effective December 1, 1972, is entitled "Use of Furloughed Employees to Perform Relief Work." Basically, the Rule grants the Carrier the right to use furloughed employees to perform relief work during the absence of a regular occupant of a position. Note 1 to the Rule indicates it does not apply to extra work. Paragraph 1(a) of the Understanding provides that furloughed employees will not be considered available to work a second tour of duty within one workday. It is contended these three factors prohibit calling furloughed employees to clear a derailment.

The Carrier contends that, in this instance, the Organization's reliance on Rule 24 1/2 is misplaced because the two Carmen recalled from furlough were recalled to work bulletined vacancies pending assignment. As such, they were recalled employees and not furloughed employees being used to perform relief work. In support of its position, Carrier points out that neither individual reverted to furlough the next day, but continued working on the positions to which recalled.

The cited prohibition against using furloughed employees for relief work on a second tour of duty does not apply to recalled employees. The Organization has not rebutted the Carrier's contention it recalled the two Carmen and that they remained on the job after the derailment work was completed. The Organization's speculations over the timing of the recall is not evidence. This Board considers the Claim to fail for lack of proof.

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 4th day of November 1987.