

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11404
Docket No. 11040
88-2-85-2-155

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Chesapeake and Ohio Railway Company
(Pere Marquette District)

Dispute: Claim of Employees:

1. That the Carrier violated Rule #25 (Use of Furloughed Employees), of the May 1, 1954, Agreement, allowing a junior furloughed employee Jeffery L. Johnson, I.D. No. 2622761 Tentative Carman, to fill temporary vacancy on November 1, 1983; thereby depriving Tentative Carman Mr. James E. Moorner (I.D. No. 2622366), a senior employee, eight (8) hours compensation.

2. That accordingly, Carrier be ordered to compensate Tentative Carman James E. Moorner eight (8) hours' pay at the straight time rate.

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.

It is the Organization's position that Carrier violated Rule 25 of the controlling Agreement when a junior furloughed employee was called to fill a temporary vacancy on November 1, 1983. The Organization asserts that Claimant, as the senior employee, was available for such work and had made proper application for call in work prior to the date of vacancy. It maintains that Claimant had been frequently called and used to perform relief type work and adduced a furloughed employee work utilization analysis to support its contention of his availability. Furthermore, it argues that Carrier failed to prove that a reasonable attempt was made to call Claimant and thus, consistent with the Board's decisional rulings on this point, the Claim should be fully sustained. It cited Second Division Award Nos. 4815, 4855, 5999, 6682 as controlling herein.

In rebuttal, Carrier raises both procedural and substantive defenses. Procedurally, it contends that the Claim is defective, since a monetary demand was not initially requested. It argues that the Claim's subsequent modification, incorporating a monetary outcome, was an explicit violation of Rule 32.

As substantive grounds, it contends that telephone calls were made in seniority order from the list of furloughed employees desiring relief work, but observes there was no answer at the telephone number provided by Claimant. It also avers that no evidence, "whatsoever" had been provided to show that the telephone calls were not made in seniority order on November 1, 1983. It points out that in view of the direct evidentiary conflict between the parties positions, the Claim must be denied, since the Board lacks sufficient evidence to determine a contract violation. (See Second Division Award 8601; Third Division Awards 19531, 20408 and 21423 cited by Carrier as controlling.)

In considering this case, we concur with the Organization's position. As to the procedural issue, we do not find that the subsequent addition of a monetary demand modified the Claim so as to render it a different grievance and moreover, the monetary demand was a natural logical extension of the Claim. By definition, a violation of Rule 25 would necessitate a remedy. We have reviewed the parties substantive positions and upon the record, we are compelled to find for the Organization. The decisions cited by both sides as to the respective obligations of Carrier officials where calling furloughed employees pursuant to Rule 25 requirements have been carefully assessed within the fact specifics of this case, but we are constrained to conclude that Carrier had an obligation to prove it had records when it asserted same in its Claim denial letter of January 6, 1984. There is no indication that such records existed on or about January 6, 1984, and the later submissions of affirmative statements by two Foremen in May, 1984 verifications are after the fact.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1988.