

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: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated Rules 1, 7, 8 and associated Rules of the controlling agreement, when, beginning on October 20, 1982, Carmen from Pine Valley, Ohio were assigned by the carrier to seven (7) first shift positions at Mingo Junction, Ohio where Carmen were furloughed.

2. That the Norfolk and Western Railway Company be ordered to compensate Carmen O. S. Mays, B. J. Cardwell, A. W. Trouten, R. T. Mallory and Ugraded Carmen A. Viland, R. F. DiCarlo and K. E. Barcus for eight (8) hours each for each day worked by the Pine Valley, Ohio Carmen working at Mingo Junction, Ohio, beginning October 20, 1982 through January 30, 1983; and Carmen J. D. Sedon, G. R. Barcus, J. C. O'Brien, P. E. Kensicki, all of whom were furloughed on January 31, 1983, along with O. S. Mays, B. J. Cardwell and A. W. Trouten, for eight (8) hours each for each day worked by the Pine Valley, Ohio Carmen working at Mingo Junction, Ohio, beginning January 31, 1983 and continuing until the contract violation is rectified, at Mingo Junction, Ohio.

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 were given due notice of hearing thereon.

On July 21, 1982, Carrier served notice on the Organization of its intention to transfer several Carmen with their work from Pine Valley, Ohio, to Mingo Junction, Ohio, a distance of eighteen miles. The Organization immediately challenged the type of notice given as well as other aspects of the proposed transfer. Notwithstanding these challenges, Carrier, without an implementing agreement, made the transfer effective October 20, 1982. The

Organization immediately filed two claims. One contended the Merger Protection Agreement was violated because employees and work were transferred from one location to another without an implementing agreement, and the other contended the Working Agreement point seniority provision was violated when Pine Valley Carmen were allowed to work at Mingo Junction.

The Merger Protection Agreement claim was progressed to the forum holding exclusive jurisdiction to hear such matters, SBA No. 920. On December 10, 1984, that Board issued an Award in favor of the Organization. The other claim was progressed to our Board.

Carrier challenges our jurisdiction to consider the seniority claim on several grounds. It contends that it is a "dual claim" to the case progressed to SBA No. 920. It also argues the Merger Protection Agreement supersedes the Working Agreement in such transactions and that the dispute resolution procedures of the Protection Agreement are mandatory and must be utilized for settlement of all grievances connected therewith.

We agree with both points. While two separate and distinct claims were filed in this matter, the precipitating act was a single notice served under the Merger Protection Agreement advising the Organization and the Carmen affected of an impending transfer of work and positions from one location to another. The Organization to our knowledge, never was of the opinion that such a transfer could not be accomplished under the Merger Protection Agreement. Its basic objection was directed to the type and length of notice issued and a demand for negotiation of an implementing agreement. The Carrier had given a sixty day notice arguing that an implementing agreement was not necessary. The Organization felt that a ninety day notice was necessary and an implementing agreement was required. These differences were decided in a lengthy and detailed opinion by SBA No. 920.

It was the notice of transfer given under the Merger Protection Agreement and the transfer itself that impacted on seniority rights and work entitlements of Mingo Junction Carmen. The appropriateness of a transfer of employees and work under the Merger Protection Agreement and the affect of such transfers on matters of seniority at the new location are interwoven and cannot be divided into separate claims.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February 1988.