

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician W. H. Hicks was unjustly treated when he was not recalled to service from furlough status in seniority order as is prescribed in Rule 29(d) of the controlling Motive Power and Car Department Agreement, effective April 16, 1942.

2. That accordingly, the Southern Pacific Transportation Company be ordered to allow Electrician W. H. Hicks payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and loss of wages for the period of January 5, 1986 to March 19, 1986, with the loss of wages to include interest at the rate of eight percent (8%) per annum.

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 Organization asserts that Carrier violated Rule 29(d) when they failed to recall Claimant in seniority order. It maintains that a junior employee was improperly recalled to fill a position that should have been filled by the Claimant. It charges that the Carrier had the responsibility to contact the senior employee. That Carrier delegated this task to the Local Chairman was in error and Claimant is entitled to compensation.

Carrier disputes the Organization's Claim in that the practice of recalling furloughed employees on this property has been delegated to the Local Chairman. The Local Chairman had been notified of the vacancy and requested to call the senior furloughed employee. The senior employee (Claimant) was not contacted and a junior employee filled the vacancy. When Carrier

Officers were notified of the grievance, they contacted Claimant on March 7, 1986, and offered him the position. Claimant accepted the position. Claimant refused position on March 19, 1986, to accept another job.

The Board concurs with the Organization in this case. It has shown without rebuttal that Claimant was not notified and was not called in seniority order per the Rule. The circumstances herein are unique, in that there is no dispute that the Local Chairman made such contacts for the Carrier on this property. Nor is it refuted by the Carrier that "management alone accepts the responsibility of...recalling employes by letter, in accordance with Rule 29(d)." That this is the system-wide practice must be accepted as fact since there is no rebuttal herein. A violation of the Agreement was demonstrated. Part 1 of the Claim must be sustained.

As for Part 2 of the Claim, the Carrier disputed on property all portions of the Claim relating to service, seniority, vacation rights, hospital, medical and disability insurance, retirement and interest. The Board has a long established precedent which favors the Carrier and those part of the Claim are denied. The Board does not agree with Carrier's assertions that this is a "new" Claim. Part 2 of the Claim must be sustained for lost wages.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 17th day of August 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 11541, DOCKET 11417
(Referee Zusman)

The Majority decision is beyond understanding. On the one hand, the Majority finds that the Carrier did not refute,

"that management alone accepts the responsibility of...recalling employes by letter, in accordance with Rule 29(d)."

On the other hand, in the sentence immediately preceding the one above, the Majority finds,

"that there is no dispute that the Local Chairman made such contacts for the Carrier on this property."

Both statements cannot be correct. To add to the confusion, there is nothing in Rule 29(d) that requires the employee to be recalled by letter. Rule 29(d) provides:

"(d) When restoring forces, employes will be called back in accordance with their seniority, if qualified and available within a reasonable time and shall, if possible, be returned to their former positions."

In an attempt to bring an intrusion into the confusion a brief recitation of the facts is necessary. The facts show that when the vacancy occurred, in accordance with the long standing practice of the parties, the Local Chairman made several attempts to contact the Claimant. When such attempts proved unsuccessful, the furloughed employee next in seniority was recalled, again, in conformity with the practice of the parties. In essence, the Agreement does not provide how employees will be notified of recall; the parties agreed that the procedure would be for the Organization to make such notification; the Organization made several unsuccessful attempts to do so; the next step was to contact the next senior employee, which was done.

Of course, we Dissent.

MW Fingerhut
M. W. FINGERHUT

Robert L Hicks
R. L. HICKS

Michael C. Lesnik
M. C. LESNIK

B V Varga
B. V. VARGA

James E. Yost
J. E. YOST