

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Ms. P. Saxon, Laborer, Superior, Wisconsin, was denied compensation when the Burlington Northern Railroad Company assigned a junior Laborer to perform relief work at Superior, Wisconsin, rather than assigning Ms. Saxon.

2. That, accordingly, the Burlington Northern Railroad Company be ordered to compensate Ms. Saxon for all time lost as a result of this action. She is entitled to eight (8) hours pay at the pro rata rate on the dates of August 5, 6, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, and 29, 1986, September 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, and 21, 1986 (total of 264 hours). She is also entitled to eight (8) hours at time and one half for the dates of August 20 & 21, 1986 (8 hours each date), because the Carrier failed to call her for relief work.

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 Claimant is currently employed as a Laborer at the Carrier's Northtown facility in Minneapolis, Minnesota. At the time of the claim, she was employed in the Carrier's shops at Superior, Wisconsin, and had been in a furloughed status since December 31, 1985. On the date she was furloughed, she had notified her Shop Foreman that she would be available for relief work if any became available, but that an assignment would have to extend a week or more, since she was not interested in working day-to-day vacancies.

On approximately August 11, 1986, the Carrier consolidated its shops at Superior, Wisconsin. At that time, it was decided that the services of a Laborer would be required for approximately thirty days to assist in the consolidation. Following local custom and practice, the Local Chairman moved to call back to work the senior furloughed Laborer who had indicated a desire to perform relief work. That individual turned out to be Claimant.

The Local Chairman attempted to reach the Claimant on August 11, but there was no answer when he called. He then contacted the next senior employee on file who had requested to perform relief work who accepted the position. The Claimant contacted the Carrier on September 19, 1986, and indicated her desire to fill the position. She requested that she displace the junior employee, and was permitted to do so, effective September 22, 1986. Claimant continued to work in the position until September 25, when the work was completed and the position was abolished.

According to the Organization, the Claimant's rights were violated under Rule 21(c) of the controlling Agreement. First, it maintains that she was not telephoned during the month of August by the Carrier to call her back to work. Second, it insists that Claimant was not aware that the junior employee was working in the temporary position until she was informed of this on September 19, 1986, at which time she requested that she displace him. The Carrier, however, disputes the Organization's presentation. It maintains that the Claimant was, indeed, telephoned by her Local Chairman regarding her availability to fill the vacancy. Further, the Carrier states that she did know about the junior employee's assignment to the temporary position in question. And, it points out that Claimant was not called to work the single days prior to August 11, since she had indicated that she was only interested in assignments of at least one week's duration.

Rule 21(c) of the controlling Agreement reads in pertinent part:

"Furloughed employees who have indicated their desire to participate in such relief work will be called in seniority order for this service."

In the instant case, the material facts are in dispute, however, and it is impossible for this Board to resolve the conflict. In similar Third Division Award 26291, the Board held:

"...the Board, after careful examination of the entire record of this dispute, finds that it is unable to deal with the substantive issues raised; this, because of some fundamental conflicts with respect to the pertinent facts. Petitioner alleges that less senior employees were recalled prior to Claimant, while Carrier asserts that this was not the case. Based on the record, this Board has no possible way of knowing which version of the facts is correct, hence it can make no determination with respect to the merits; the claim must be dismissed."

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In the absence of any substantiating evidence that would resolve the existing discrepancies, this Board is also unable to make a determination in the instant case, and, therefore, must deny the claim.

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 26th day of July 1989.