

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(CSX Transportation, Inc.
(The Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, specifically Rule 28, when on the date of April 14, 1987 the Carrier ordered Carman from another seniority point to perform the work previously performed by the Claimant. The Claimant has been monetarily and contractually deprived under the provisions of the controlling Agreement between the Brotherhood of Railway Carmen of the United States and Canada and the Baltimore and Ohio Railroad Company.

2. That accordingly, the Carrier be ordered to compensate the Claimant for all monetary losses suffered as a result of such violation, such losses to the extent of eight (8) hours pay at the Carmen's straight time rate, on account of Carrier's violation of Rule 28 of the controlling agreement as amended, on the date of April 14, 1987.

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.

In the instant record, Claimant was furloughed and held seniority at Punxsutawney, Pennsylvania. There is no dispute that on April 14, 1987, Carman Baysura, who held seniority at Butler, Pennsylvania, (another seniority point) was ordered to assist a Punxsutawney Carman in the oiling of journal boxes and putting air hoses on cars stored on the Indiana Branch. Inasmuch as the furloughed Claimant was not recalled to assist on the stored cars, the Organization filed a Claim in his behalf.

The Organization argues that the Carrier's assignment of the Butler Carman was a violation of Rule 28 of the Agreement. In challenging the Carrier's action, it argues that the governing Rule reserves the work on the Indiana Branch to the seniority of the Punxsutawney Carmen. Accordingly, the Claimant was deprived of work that was reserved under the Agreement.

The Carrier argues that the amount of work was minimal, that the assignment of the Butler Carman did not violate the Agreement, and that said work was not assigned by Rule to the Punxsutawney Carmen. The Carrier's position in this matter is that it may use employees on duty, rather than recalling furloughed employees for small amounts of work. It further argues that it may use employees from either or both Punxsutawney and Butler as the Agreement does not reserve Indiana Branch work to any specific seniority point.

The Board finds from the record that the Carrier has not violated the Agreement for the following reasons. First, the Agreement does not grant Punxsutawney Carman rights to Indiana Branch work. Second, the Agreement consolidates Butler (11) and Foxburg (19) as one seniority point and leaves Punxsutawney as a separate seniority point (12). Rule 28 states that seniority is confined to the point employed, which in the instant case is Punxsutawney and not the Indiana Branch.

There is a lack of proof that the governing Rule reserves the work on the Indiana Branch to the seniority of Punxsutawney Carmen. There is no probative evidence and contractual language on point with the instant circumstances. We also note that the Organization does not dispute Carrier's argument that it "retains the right to utilize employees already on duty" rather than recalling furloughed employees for a small amount of work. For the above reasons the Claim is denied (Second Division Awards 11325, 11324, 11085, 10938, 10800).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Zever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.