

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12375
Docket No. 12390
92-2-91-2-186

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Chicago, Missouri and Western Railway

STATEMENT OF CLAIM:

1. That the Chicago, Missouri & Western Railway violated the terms of our Agreement, particularly Rules 8, 16, 18, 20 and 22, when they failed and/or refused to allow furloughed Carman B. Crenshaw the opportunity to fill a vacancy created by Carman N. J. Green being on vacation. The Carrier also violated rule 34 of the Agreement by failing to deny this claim in a timely manner.

2. That accordingly, the Chicago, Missouri & Western Railway be ordered to compensate Carman B. Crenshaw \$10,000 (ten thousand dollars) as payment for the amount of time he should have worked on Carman N. J. Green's job (July 24 - August 25, 1989) and to cover expenses incurred traveling to Springfield, Illinois.

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 genesis of this dispute resides in the economic conditions associated with the business climate during the time period under consideration. The Carrier became a railroad in April 1987, and commenced operation over tracks in Illinois and Missouri purchased from the Illinois Central Gulf Railroad. The projected business did not develop and after operating at a deficit for some time, the Carrier was forced to seek protection under Chapter

11 of the Bankruptcy Code in April 1988. Its efforts to curtail expenses resulted in substantial lay-offs for all classes of employees. The reduction in Carmen ranks was particularly contentious at the East St. Louis Yards. This situation was further aggravated in April 1989, by the withdrawal of business from that yard by its largest customer. These conditions prompted a flurry of claims. It is from this background that the misunderstandings associated with the present Claim arose.

The frustrations felt by the Organization are apparent from the manner in which the Claim was handled on the property. The September 18, 1989 Statement of Claim stated in part "...violations of the Controlling Agreement appears to be a continual intent to destroy Carmen's seniority..." and "Carrier and individuals responsible be fined the maximum allowable under the Railway Labor Act, Title 45 - United States Code, Chapter 8 ..." The Claim was denied.

The appeal on October 5, 1989 mentioned Claimant and Carman L. Harper and reiterated, among other things, the aforementioned claims. The Carrier exceeded the time limits contained in Rule 34 of the Agreement when it replied on December 29, 1989, but since the Claim had asked for damages and punishment under the Statute rather than referring to violations and expected relief afforded by the Agreement, it believed the 60 day time limit did not apply. We agree with the Carrier.

Based on the record, the shifting of emphasis by the Organization as the dispute was processed on the property is more the product of frustration than an effort to rectify transgressions of the Agreement in good faith as required by the procedures of the Railway Labor Act. We, therefore, find no violation of Rule 34.

The specific action which gave rise to the Claim before this Board was caused by the fact that Carman Harper took a one week vacation from his Springfield assignment and Claimant was recalled from furlough to fill this vacation assignment at Springfield, Illinois. At the end of his vacation, Carman Harper, at his request, was allowed to fill a vacation relief position at East St. Louis. Claimant then continued to work the short vacancy assignment at Springfield while Carman Harper filled the job in East St. Louis. Claimant views such action as a violation of the Agreement as he believed he should have been given the East St. Louis vacation relief. However, the record reveals that the controlling Rules under the situation read as follows:

Rule 31, Vacation:

"(h) Absences due to vacation shall not be considered as vacancies in applying the Rules of this Agreement."

Rule 18, Short Vacancies:

"(a) New positions or vacancies of less than thirty (30) calendar days' duration shall be considered short vacancies and may be filled without bulletining."

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The short vacancy filled by Claimant at Springfield was less than 30 days and, therefore, in accordance with the Rules.

Based on the foregoing and the entire record we find that the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.