

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12944
Docket No. 12724
95-2-93-2-42

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers, System Council No. 6
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"1. That the CSX Transportation, Inc., (formerly Louisville and Nashville Railroad Company) failed to properly deny claims covering the dates of March 8 thru 28 and March 30 thru April 15, 1991 and thereafter refused to allow same, thus violating Article V of the August 21, 1954 amendment to the working Agreement which requires Carrier to deny claim within sixty (60) days or allow claim as presented.

2. That the CSX Transportation, Inc. (formerly Louisville and Nashville Railroad Company) further violated, but not limited to Rules 26 and 29 of the working Agreement effective September 1, 1943, as amended, also the August 21, 1954 Agreement, Article IV, Carrier's Proposal No. 6, when Carrier furloughed Electrician V. B. Hadley effective March 1, 1991 in violation of his seniority rights.

3. That the CSX Transportation, Inc. (formerly Louisville and Nashville Railroad Company) be ordered to compensate Electrician V. B. Hadley eight (8) hours compensation at his standard rate of pay for each claim date from March 8, 1991 thru May 20, 1991."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 first paragraph of the Statement of Claim in this dispute (covering numerous individual claims) concerns the Carrier's failure to allow certain claims as presented. This portion of the dispute is closely similar to that reviewed in Second Division Award 12938, except that it involves a different Claimant. As to this aspect of the dispute, the Board reaches the same conclusion as in Award 12938.

The second Paragraph of the Statement of Claim alleges that the Claimant was furloughed effective March 1, 1991 "in violation of his seniority rights." The Organization's complete statement of this alleged violation is found in the claim itself as follows:

"The Carrier has . . . allowed junior employees to remain on duty and under pay either in permanent or temporary positions performing regular assigned, relief and/or extra work."

The Claimant and four other Electricians were assigned to the Transportation Service Center, a "running repair" shop. All were given notice of furlough on March 1, 1991. Two of these Electricians had the seniority (and, as emphasized by the Carrier, the qualifications) to displace employees at the Wheel and Axle Shop, five miles away. To acquaint them with their duties there, the Carrier temporarily retained two Wheel and Axle Shop employees.

The Organization argues that the Claimant was senior to these two temporarily retained employees, as well as another employee (Robinette) whom the Organization contends could have been displaced by the Claimant.

The Carrier offers a number of defenses to its position, but it is necessary to review only a few of these.

Referring for ease of discussion to the first claim on behalf of the Claimant, the Carrier contends that it is untimely and may not be considered by the Board. The Carrier notes that the claim is dated May 3, 1991, whereas the specified action by the Carrier was to furlough the Claimant on March 1, 1991. The Carrier points out that the claim was made more than 60 days after the alleged violation and thus, under Article V, is time barred.

The Board finds that there are grounds for finding the claim to be timely. While the Claimant was furloughed on March 1, no advance notice was given. In lieu thereof, the Carrier paid the Claimant for the following five work days. The claim, as a result, seeks remedy commencing March 8 -- making the May 3 claim to be within the required 60 days.

On the merits, however, the Organization fails to prove a violation in the means of furloughing the Claimant. The Organization refers to the two junior employees temporarily retained for instructional purposes at the Wheel and Axle Shop. This is not an unusual step, and there is simply no showing that the Claimant could have been utilized in the temporary training capacity for acquainting Electricians senior to the Claimant in the assignments to which their seniority took them.

As to the other employee, the Carrier provides convincing records that he was working throughout this period as a non-contract Supervisor (although apparently having skills and experience as an Electrician). There was no basis demonstrated to show that the Carrier was in any way required to permit the Claimant to displace this Supervisor.

In sum, there is simply no demonstration that the Claimant was improperly furloughed in derogation of his seniority entitlement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of August 1995.