Award No. 586

Docket No. 610

2-DL&W-EW-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Electrician Thomas Mawn was unjustly dealt with and provisions of agreement were violated. That he be compensated for all time lost between February 19 and July 6, 1940.

JOINT STATEMENT OF FACTS: The electrical department of the maintenance of way and Structures department covered by the current agreement, effective December 3, 1935, on the Morris and Essex division is divided into three (3) seniority sub-divisions, in accordance with the provisions of Rule 26, known as the Hoboken electric shop, traction substation, and traction line workers. During the period February 19, 1940, to July 6, 1940 the Hoboken electric shop's furloughed list consisted of four (4) electricians and two (2) electrician helpers. The traction substation furloughed list consisted of two (2) electricians.

On February 19, 1940, Mr. W. S. Wardlow, furloughed electrician from the traction substation roster, with seniority date August 1, 1933, was employed by the railroad company for electrical maintenance on the Morris and Essex division with headquarters at the Hoboken electric shop. Wardlow was employed to fill a vacancy due to the illness of Electrician James McIntyer from February 19, 1940 to July 6, 1940. During this period, February 19, 1940 to July 6, 1940, Electrician Thomas Mawn furloughed from Hoboken electric shop roster, with seniority date October 16, 1928, was on furlough.

In May, 1940, Electrical Supervisor Beischer received a letter from Electrician Mawn postmarked May 6, 1940 protesting the employment of Electrician Wardlow.

POSITION OF EMPLOYES: Rule 22. Reducing hours—reads in part as follows:

> Rule 22. "When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force, except that the hours may be further reduced by agreement with the General Committee of Employes. When the force is reduced, seniority, as per rule 26 will govern the men affected to take the rate of the job to which assigned.
>
> Forty-eight (48) hours notice will be given before hours are reduced. If the force is to be reduced, four (4) days notice will be

complied with Rule 30 of the agreement, requiring grievances to be presented in ten days.

There is no provision in the agreement of December 3, 1935, which requires the carrier to locate or trace a furloughed employe. Carrier handled this matter in what seemed to it to be for the best interests of itself and the employes. Petitioner's local committee concurred in such handling. Therefore this claim should be denied.

Rebuttal of Carrier to Position of Employes

The carrier concedes, as petitioner contends, "that it is mandatory under Rule 22 that senior laid-off men will be given preference in returning to service," and that Stetson, the oldest furloughed employe, was entitled to fill the vacancy. The Hoboken roster in effect on February 19, 1940, showed Stetson, Doidge, Mawn and Anderson on furlough. Petitioner claims that Quinn and Austin were also on furlough but it should be noted that the roster shown in petitioner's position is the one issued October 1, 1936. Between that date and February 19, 1940, Quinn and Austin had been removed from the roster due to Quinn's retiring and Austin voluntarily transferring to another department. The reasons for not assigning Stetson, Doidge, Mawn or Anderson are fully set forth in carrier's position. Mawn was not assigned because the carrier had no record of his whereabouts. He had been on furlough for nearly three years and had not advised the electrical supervisor of his address. Consequently, on February 19, 1940, carrier filled the temporary vacancy by assigning Wardlow, who was out of work.

Stetson, the oldest furloughed employe, had the first call on the vacancy. But Stetson being at this time employed in another position did not object to the filling of what was then understood to be a day to day temporary vacancy by the appointment of Wardlow to the position, and the carrier's action was concurred in by the local committee for no protest was made between February 19, 1940 and May 7, 1940. If there was a technical violation of the rule, it occurred on February 19, 1940, and was just as effective during the three month period, February 19 to May 7, 1940, as during the two month period, May 7 to July 6, 1940; but no grievance was presented within ten days after February 19, as provided in Rule 30. On the contrary, local committeeman, James F. Clark, who handled Mr. Mawn's claim, after discussing it with Mr. Thorp and learning of the day to day nature of the vacancy, was in full accord with the method by which the vacancy was being filled. This is borne out by the fact that nothing further was done on this claim, and no further protest made until July 8, 1940.

Petitioner in its Position states:

> "but instead continues the violation arbitrarily and refusing to call the senior furloughed man available or giving him the preference to return to service who was in this case Thomas Mawn, that he is entitled to compensation for all time lost."

Thomas Mawn was not available on February 1, 1940, since carrier did not know his whereabouts. Furthermore, Mawn was not the senior furloughed man since both Stetson and Doidge were also on furlough and both held seniority dates prior to Mawn's. If there is any claim allowable in this case that claim is Stetson's, not Mawn's.

This claim should be denied.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

No proof has been established that Electrician Mawn's address was known by the carrier when Wardlow was called to take the place of McIntyer on February 19, 1940.

However, when Electrician Mawn protested the assignment of Wardlow, the carrier was bound to recognize Mawn's rights under the agreement, unless there could be good and sufficient reason for denial.

Following conference between local committee and local officials on May 14, 1940, in connection with this dispute, Mawn was denied the position to which he was entitled, unless the carrier recalled one of the electricians senior to Mawn.

AWARD

Electrician Mawn shall be compensated for time lost from May 14, 1940, to July 6, 1940, when the senior electrician was recalled to fill the position permanently.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1941.