Award No. 656
Docket No. 480
2-CI&L-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That John A. Cooper be restored to service at Mitchell, Indiana, and paid for all time lost at rate of 78 cents per hour, eight (8) hours per day and six (6) days per week, from April 14, 1939, until restored to service on account of being furloughed April 14, 1939, in violation of Rules 30, 26 and paragraph B of miscellaneous rule, page 24, of current agreement, also violation Section VI of the Railway Labor Act, the violation being assignment of carmen from other seniority points to do the work formerly performed by Cooper.

* * * * * *

In Award No. 491, rendered by the Division July 31, 1940, the claim was remanded without prejudice, in conformity with the following findings:

> "Car Inspector John A. Cooper was properly furloughed, but his furlough did not destroy his seniority rights. When the work requirements of a seniority point or assignment have decreased to the extent that the services of even one employe are not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change.
>
> The Division is of the opinion that each of the parties should respect the rights of the other and that an equitable disposition can be made by the representatives of the parties. The Division remands this question to the parties directing that they make an earnest effort to effect an equitable adjustment of the dispute."

Upon failure of the parties to adjust the dispute, the Division resumed consideration of the proceeding. When the case was deadlocked, John P. Devaney was appointed referee, to sit with the Division as a member thereof; and on May 20, 1941, a further hearing was held.

In Award No. 627, rendered by the Division June 26, 1941, the claim was again remanded without prejudice, in conformity with the following findings:

> "When the work requirements of a seniority point or assignment have decreased to the extent that the service of even one employe is not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change. The disputants have failed to reach an agreement. It is unfair to require the carrier to maintain an employe at a seniority

point when the service demands have no reasonable relation to such maintenance unless the agreement compels it. Likewise, it is unfair to permit the carrier to invade the seniority rights of an employe at a particular point because service demands have decreased. The employes and the carrier can negotiate an agreement covering the specific situation which will consider and recognize the equities and rights of each. For this reason, the dispute is remanded with directions to adjust it and report the agreement reached to this Division within ninety days from this date in lieu of the Division determining the matter as it sees and evaluates the equities."

Upon failure of the parties to reach agreement within the prescribed ninety days, the Division once more resumed consideration of the proceeding. Since the case remained in deadlock, I. L. Sharfman was appointed referee, to sit with the Division as a member thereof, in place of Referee Devaney who had died in the interim; and on November 13, 1941, a further hearing was held.

The following findings and award are designed finally to dispose of the proceeding:

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.

Carman Cooper was properly furloughed under Rule 26, but this furlough did not destroy his point seniority established by Rule 30. To the extent, therefore, that work at Mitchell and its surrounding territory was subsequently performed by carmen from other seniority points, Rule 30 was violated, as well as that portion of Rule 26 which deals with the restoration of forces. Carman Cooper was entitled to this work and should be compensated for it in conformity with the rules of the prevailing agreement. His compensation for time lost should thus include one day's pay of eight hours for each day upon which outside carmen were used at his seniority point, and such additional amounts as he would have earned if he had received five days' notice each time the intermittent service at his seniority point was terminated.

These findings are based, as they must be, upon the relevant rules of the present agreement; and as long as these rules continue in effect Carman Cooper, while furloughed, will be entitled to the treatment set forth in these findings. It has been conceded by all concerned, however, that the substitution of district seniority for point seniority would prove of advantage to both parties, and that a tentative agreement in this regard has actually been reached by them. With the disposition, on the basis of the above findings, of the problem of compensation for past violations of the existing rules, the road appears to be clear for the formal adoption of an agreement establishing district seniority, with the elimination, for the future, of the difficulties and harmful effects encountered in this dispute.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of December, 1941.

Dissent to Award No. 656, Docket No. 480

The Findings plainly state that the employe was properly furloughed, but this furlough did not destroy his point seniority established by Rule 30, all of which is true, but in further stating that this furloughed employe was entitled to any work performed at the point by employes from other seniority points or districts, the facts of record are ignored to the extent that the work actually performed by employes from another seniority district in many instances consisted of an hour's work or less, and the record further shows that the work was infrequent.

Rule 26 provides:

> "* * * In the restoration of forces, senior laid off men will be given preference of re-employment, if available within a reasonable time, and shall be returned to their former positions; local committees will be furnished list of men restored to service; * * *."

There was no restoration of force within the meaning and intent of the above quoted rule. The carrier was within its rights through the necessity of reducing expenses to furlough the claimant, and it is admitted that he was properly furloughed. However, in addition to deciding that the claimant is entitled to compensation for one day's pay of eight hours for each day upon which outside carmen were used at his seniority point, the further finding that claimant was also entitled to "such additional amounts as he would have earned if he had received five days' notice each time the intermittent service at his seniority point was terminated," definitely ignores the meaning and intent of that portion of the rule which provides for five days' advance notice prior to each furlough. In other words, the intent of that portion of the rule referred to was clearly intended to apply where men were regularly or permanently assigned and had no knowledge of when their service would terminate. Obviously, in every instance where the claimant would have been restored to service he would very definitely know that such service was for an hour or less and only on the day for which he was called for service. To enlarge upon the meaning and intent of the rule to the extent of allowing five additional days for each time recalled is not only an improper but likewise an unreasonable interpretation of this rule. The claimant was never recalled and certainly the rules of agreement were never intended to impose upon the carrier, in such circumstances, the penalty of five additional days for no work whatever performed.

(Signed) J. A. Anderson
M. W. Hassett
W. C. Hudson
C. E. Peck
A. G. Walther