

Award No. 3529

Docket No. 3491

2-GTW-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 92
RAILWAY EMPLOYES' DEPARTMENT
A. F. of L. - C. I. O. (Carmen)**

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly used Carman Helper J. L. Bruce to fill the position of Carman during the period June 3, 1958 to August 8, 1958, inclusive.
2. That accordingly the Carrier be ordered to compensate Carman Leo E. Thibert in the amount of 8 hours at the straight time rate of pay for each day Carman Helper Bruce was improperly assigned to perform Carman's work.

EMPLOYES' STATEMENT OF FACTS: On June 3, 1958 there existed at the Pontiac, Michigan shops of the Grand Trunk Western Railroad, hereinafter referred to as the carrier, three (3) vacancies for carmen, account (1) Carman R. Diggs on sick leave due to heart condition since January 22, 1958, (2) Carman C. Cronkright on sick leave due to broken leg since March 24, 1958, and (3) Carman J. Warthen on sick leave since May 14, 1958.

On June 3, 1958, the carrier elected to fill one of these positions by calling back to work Carman Helper J. L. Bruce, who holds a carman helper's seniority date of May 19, 1956.

There were carmen furloughed at Pontiac shops on June 3, 1958 subject to recall and Carman Leo E. Thibert, hereinafter referred to as the claimant was the senior furloughed carman.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

POSITION OF EMPLOYES: Based upon the foregoing indisputable facts, it is submitted that the carrier erred on June 3, 1958 when it called in furloughed Carman Helper J. L. Bruce and assigned him to fill a position of carman and perform carman's work.

Rule 27—Assignment of Work. This rule relates to the distribution of work as between the various crafts. In view of Article IV of the August 21, 1954 agreement being controlling, this rule likewise has no bearing.

Rule 104—Qualifications—This rule gives a definition of a carman, and has no reference to the question of calling furloughed men for relief work.

Rule 118(c)—Rule 118 has been quoted in full above. In their progression of the claim on the property, the employees alleged that the carrier had not complied with Rule 118(c), which provides that when carmen helpers are actually promoted to carmen, such promotion is to be mutually agreed upon between management and the representatives of the employees. However, this refers to the promotion of a man to the carmen's roster, after he has worked four years as a carman or helper. This rule covers use of men as carmen who have not yet been promoted. It does not call for mutual agreement whenever such a man is used as carman, the mutual agreement between carrier and employees only comes into play after the man has worked for four years and is due for promotion into the ranks of carmen. In the instant case, Bruce was used as carman, prior to his promotion into that class, exactly as spelled out in Rule 118. No carmen were available at Pontiac because no furloughed carmen had made themselves available by applying for relief work.

Reference to Article IV shows that the carrier has the right to call back furloughed men only when such employees have signified in the manner provided in paragraph 2 of the article their desire to be so used. To call the claimant on June 5 and again on June 11 would have been a clear violation of Article IV. Not only did Thibert fail to make written request for work, he also previously indicated orally to the car foreman that he was not interested in being called in for relief work. Article IV provides, in paragraph 2:

“Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule.”

Note 3 of Article IV provides that furloughed employees shall in no manner be considered to have waived their rights to a regular assignment when opportunity therefor arises. However, the article as a whole clearly indicates that furloughed men do waive their rights to relief work by not making written application for it. By failing to make written request for relief work, the claimant waived any rights to be called for such work.

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.

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

During the period from June 5 to August 8, 1958 carrier used furloughed Carman Helper Bruce to fill temporary vacancies and the Employees assert that Claimant, who was a furloughed carman, should have been called.

Carman Helper Bruce had given Carrier written request for extra or relief work while neither Claimant or any other furloughed carman had done so. Under Rule 118 a carman helper may be used “in the event of not being able to secure a sufficient number of qualified carmen.”

Employees cite Rule 22 whereunder in restoration of services senior laid-off men will be given preference in returning to service, if available within a reasonable time.

Carrier asserts that the filling of a temporary vacancy was not a restoration of services and that under Article IV of Agreement of August 21, 1954 claimant was not available. That agreement was made subsequent to Rule 22 so in case of conflict it must prevail.

The work involved here was relief work on regular positions during absence of regular occupants and claimant was a furloughed employe. Under Article IV carrier had the right to use him provided he had signified in the manner provided in paragraph two thereof his desire to be so used. Claimant had failed to signify such desire so Carrier was unable to secure him under the meaning of Rule 118 and a carman helper might be used. Carman Helper Bruce having notified Carrier of desire to be used as required by Article IV was properly used.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.

DISSENT OF LABOR MEMBERS TO AWARD 3529

The majority holds that since the agreement of August 21, 1954 was made subsequent to Rule 22 of the agreement dated September 1, 1949 it must prevail in case of conflict. There is no conflict — paragraph 1 of Article IV prescribes that "This provision is not intended to supersede rules or practices which permit employes to place themselves on vacancies on preferred positions in their seniority districts . . ."

Rule 14 of the September 1, 1949 agreement requires that "Vacancies of thirty (30) calendar days or more . . . will be bulletined for five (5) calendar days to the respective crafts and filled by the senior qualified applicant." The instant position had been vacant for more than thirty days and had it been properly bulletined the claimant, being the senior qualified carman, should have been given preference to return to service.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink