Award No. 4465
Docket No. 4323
2-MP-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Firemen & Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Laborers A. L. Martin and Rufus Cox were improperly furloughed when others were used to perform their work from May 14 and 26, 1961, respectively, at Paragould, Arkansas.

2. That accordingly the Carrier be ordered to compensate the aforesaid laborers for all time lost from the aforementioned dates until they are returned to service.

EMPLOYES' STATEMENT OF FACTS: For many years the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, has maintained car department facilities at Paragould, Arkansas, maintaining a working force of five (5) carmen and two (2) laborers prior to May 14, 1961, which is evidenced by this dispute.

The two laborers, Mr. A. L. Martin and Mr. Rufus Cox, hereinafter referred to as the claimants, were regularly assigned in the capacity of laborers in the car department at Paragould, with regularly assigned work week and hours of service as follows:

A. L. Martin — hours 11 P. M. to 7 A. M., Thursday through Monday, rest days Tuesday and Wednesday.

Rufus Cox — hours 12 Noon to 8 P. M., Saturday and Sunday; 7 A. M. to 3 P. M., Monday; 11 P. M. to 7 A. M., Tuesday and Wednesday, rest days Thursday and Friday.

The Claimants' duties consisted of supplying diesels and cabooses, operating tractors, helping hostler, cleaning the rip tracks and car yard, cleaning carmen's and trainmen's locker rooms, cleaning offices, picking up scrap and unloading sand and lumber. They were instructed by their supervisor and did show the following hours and duties on their time cards daily:

The same conclusion has been reached by other divisions of your Board. In Award 6937 of the third division which was quoted with approval in Award 8060 of that division, your Board said:

> "It is well to say here, also, that a position remaining in the Agreement does not, by that fact alone, impose a duty upon the Carrier to assign a worker to the position if there are no duties remaining to be performed in the normal course of events for which the position was created."

The board sustained the right of the carrier to vacate a position for lack of work.

The same conclusion was reached by your board in an award on the Missouri-Illinois Railroad. The carrier had laid off the last carman at Salem, Illinois, leaving a working foreman who looked after the locomotives tying up at that point as well as doing the car department work. Your board denied the claim which alleged that the shop craft agreement had been violated in laying off the last carman. There your board found:

> "The provisions of Article VII of the Agreement of August 21, 1954, did not remove or impair the force and effect of Rule 11 of the Agreement of September 1, 1949. Article VII deals with a situation where a mechanic is on duty and Rule 11 provides that a foreman may perform work where mechanics are not employed. The record supports the view that the carman's position at Salem, Illinois, was abolished because volume of work did not justify retention of two employes at that point. The carrier is not required by the agreements to retain a position when there is not sufficient work available to justify it. No violation of the applicable agreements being shown this claim lacks merit."

We see from the foregoing that this claim turns on the simple question of fact — is there sufficient work at Paragould which may be performed by laborers to justify the employment of claimants? The answer based on the evidence advanced by the employes to show the amount of work at Paragould must clearly be in the negative. The carrier is not required to continue employes on the payroll when their services are no longer needed even in the case of employes with many years of service and as hard as the decision may be. As stated in Award 8692 of the third division where your board found the position in question in that dispute "had become very much a part-time job so far as the volume of work was concerned,"

> "Carrier has an obligation to operate as efficiently as possible so long as it does not violate the Agreement."

The agreement with the firemen and oilers was not violated when claimants were laid off and carmen and other employes performed the small amount of work remaining until all through freight service via Paragould was discontinued and all of the work disappeared.

This claim must 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.

Parties to said dispute waived right of appearance at hearing thereon.

Carrier, prior to May 14, 1961, maintained car department facilities at Paragould, Arkansas with a work force of five (5) Carmen and two (2) Laborers. On May 14, 1961, Claimant Martin, one of the Laborers was furloughed, and on May 26, 1961, Claimant Cox, the other Laborer, and two of the Carmen were furloughed. Shortly thereafter the two Carmen were recalled to service.

Claimants contend that from the furlough dates, other than Laborers have been performing the work which rightfully belongs to them. They further contend that the Carrier violated a Memorandum Agreement (cf. Employes' Ex. "A") by failing to reach an understanding with the Employes' representatives prior to the transfer of work from one craft to another.

It is the Carrier's position that:

1. There is not sufficient work at Paragould to justify the retention of Claimants.

2. Claimants have no exclusive contract right to the work they claim.

3. Employes' Ex. "A" is not a Memorandum Agreement.

The Carrier also objects to our consideration of the affidavits on pp. 8 and 9 of the Employes' rebuttal statement, dated October 29, 1962, and to the letter of October 11, 1962 from the General Chairman Carmen, which appears at pp. 10 and 11 of the Employes' rebuttal statement.

We sustain the objection, since the comparison of the dates of these documents with the date of the letter of Notification of Intention to this Division shows that these matters were not submitted during the processing of this dispute on the property.

There is no Classification of Work Rule in the controlling agreement here involved, nor does the Scope Rule of the agreement give the exclusive contractual right of the work here involved to the Claimants' Organization.

By custom and practice the work in dispute has been performed by Laborers but not exclusively. However, the Claimants have failed to carry the burden of establishing that there remains sufficient work of this type at Paragould for us to say that they were improperly furloughed.

The work was not transferred in violation of the alleged Memorandum Agreement, because a careful reading of this Exhibit shows that it is not an agreement but a statement of policy by the Carrier in a letter where the Carrier is in fact declining to enter such an agreement as is here contended.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4465

The record clearly discloses that prior to the time the claimants were furloughed they performed the work in question. Therefore, the action of the carrier was in violation of the scope and seniority rules of the controlling agreement.

James B. Zink
E. J. McDermott
T. E. Losey
C. E. Bagwell
R. E. Stenzinger