

Award No. 4597

Docket No. 4425

2-T&P-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreements when they used a furloughed Carman from Mineola, Texas, to work a temporary vacancy October 11th, 12th, 13th, 14th, and 15th, 1961, on the Fort Worth Belt Railway, Fort Worth, Texas.

2. That the Carrier be ordered to compensate the two Fort Worth Belt Railway Carmen R. L. Chancellor at the time and one-half rate for three eight hour days October 11th, 13th and 15th, 1961, and J. W. Buck at the time and one-half rate for two eight hour days for October 12th and 14th, 1961.

EMPLOYES' STATEMENT OF FACTS: The Texas and Pacific Railway Company, hereinafter referred to as the carrier, controls and operates the Fort Worth Belt Railway Company located at Fort Worth, Texas.

Under date of February 24, 1954, the International Association of Machinists and Brotherhood Railway Carmen of America, System Federation No. 121, signed an agreement with the carrier, that the schedule agreement effective on the Texas and Pacific Railway Company and Texas Pacific—Missouri Pacific Terminal Road of New Orleans would apply to the three carmen and one machinist helper on the Fort Worth Belt Railway Company effective March 1, 1954, under the conditions as set forth in the two Memorandum of Agreements. Under date of October 10, 1961, a bulletin No. CD 10-10 was posted by the carrier at various locations in shops and yards, including the Fort Worth Belt Railway advertising a car inspector's job at Fort Worth Belt Railway working Wednesday through Sunday with Monday and Tuesday designated as rest days, hours of assignment 3:00 P. M. to 11:00 P. M. — temporary vacancy of R. L. Chancellor. At the time this bulletin was posted, the carrier had a total of 12 carmen furloughed at Fort Worth, Texas, who were all listed on the Fort

You conceded, in conference, that the joint agreement of January 24, 1962, my file T-32899, amending Rule 18 (h) of the Texas and Pacific Agreement, would apply and govern in situations of this kind arising since the date of that agreement; and it is clear and undisputed that, in any event, there would be no basis for such a claim as the present one since that date.

However, it seems just as clear to me that the rules in effect in October of 1961, contemplated what was done here, as it is to both of us that the rules now in effect contemplate it.

For the reasons stated above, the claims in this case are respectfully declined."

The case is comparable in this respect to the one covered by Second Division Award 3972.

4. Claim No. 2 is excessive in any event, because pay for time not worked, if allowed at all, should be at the straight time rate rather than the overtime or punitive or time and one-half rate.

See Second Division Award 3970 between the same parties.

For the reasons stated above, the carrier respectfully requests the Board to dismiss or deny these claims in all respects.

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.

The Fort Worth Belt Railway Company is a separate corporation and carrier from The Texas and Pacific Railway Company, although the latter does own an interest in the Fort Worth Belt Railway Company and is also actively interested in that railroad's management.

On February 24, 1954, The Texas and Pacific Railway Company and the Fort Worth Railway Company signed two Memoranda of Agreements—both effective March 1, 1954—with the International Association of Machinists and the Brotherhood Railway Carmen of America. Those Agreements contain the following pertinent provisions:

Organization's Exhibit A

"Effective March 1, 1954, no machinist helper nor carmen shall be hired on the Fort Worth Belt Railway as such.

Present incumbents of positions on the Fort Worth Belt Railway Company shall have prior rights to positions on the Fort Worth Belt Railway. In event vacancies or new positions on the Fort Worth Belt are not bid in by prior right employees, said vacancies or new positions shall be bulletined to employees on the Texas and Pacific seniority roster at Fort Worth.

Present incumbents of positions on the Fort Worth Belt shall have no seniority rights on positions on The Texas and Pacific Railway Company.

Relief (including vacation relief) and temporary vacancies shall be filled by men from The Texas and Pacific roster at Fort Worth. If work at overtime rate is necessary and Texas and Pacific men are not available at pro rata rate prior right employees on the Fort Worth Belt in their respective classification shall be given preference to such work."

Organization's Exhibit B

"... the schedule Agreement effective on The Texas and Pacific Railway Company and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans shall be applied to carmen and machinist helpers on the Fort Worth Belt Railway Company, effective March 1, 1954, and in addition, the following is agreed:

The position of working car foreman is changed to position of carman."

On October 10, 1961, the Carrier (The Texas and Pacific Railway Company) posted in its shops and yards and also at the Fort Worth Belt Railway Company's facilities Bulletin No. CD 10-10 which advertised a Car Inspector's position at the latter Company's facilities. The position was a temporary vacancy—Wednesday through Sunday from 3:00 P. M. to 11:00 P. M. As no Carrier Carman holding seniority at Fort Worth sought the Bulletined position, the Carrier placed Otis Fleming, a furloughed Carrier Carman from Mineola, who was working as a Carrier Carman at Fort Worth, in the Bulletined position on October 11, 12, 13, 14 and 15, 1961. Subsequently, a Carrier Carman who held seniority at Fort Worth, bid on the temporary vacancy and was assigned to it on October 16, 1961. Carman Fleming was then released.

In addition to the Memoranda cited above, the pertinent provisions of the principal Labor Agreement Rules are as follows:

"RULE 12.

SENIORITY, TRANSFERS OR PROMOTIONS

Employees transferred from one point to another with a view of accepting a permanent transfer, will, after thirty (30) days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employees will not be compelled to accept a permanent transfer to another point."

"RULE 18.

REDUCTION OF FORCES

(h) While forces are reduced, if men are needed at other points furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern."

"RULE 20.

SENIORITY

(a) Seniority of employees in each craft covered by this Agreement shall be confined to the point where each is employed."

"RULE 22.

GRIEVANCES

(b) Should an employe subject to this Agreement believe he has been unjustly dealt with, . . . the case will be presented to the Foreman, General Foreman and Master Mechanic in their respective order . . ."

The Organization's principal contentions are that the Carrier's action violated Rule 20 (a) of the Labor Agreement as well as the pertinent provisions of the Memorandum of Agreement, supra; and that the Carrier's action "denied the prior right employes Carman R. L. Chancellor and J. W. Buck of the Fort Worth Belt Railway five days' pay at the time and one-half rate which they were rightfully entitled (sic) to in filling this temporary vacancy, since there were no Fort Worth Carmen available".

The Carrier's principal contentions are that:

- 1) Rules 12 and 18 of the Labor Agreement support its (Carrier's) action;
- 2) The Claimants are not Carrier employes; performed no service for the Carrier; and have no contractual rights with the Carrier;
- 3) ". . . there were no furloughed Carmen from the Ft. Worth Belt to work this assignment."
- 4) The claim should be dismissed because it was never presented to Mechanical Foreman C. C. Dorsett of the Fort Worth Belt Railway Company as required by Rule 22 (b) of the Labor Agreement;
- 5) The Claimants' seniority on the Fort Worth Belt Railway Company does not entitle them to demand overtime work from their employer as against the right of a furloughed Carrier Carman.

The record establishes that the Organization violated Rule 22 (b) of the Labor Agreement when it improperly filed its initial grievance with General Foreman J. T. Lunsford instead of with Mechanical Foreman C. C. Dorsett.

Accordingly, without any consideration as to the merits of the claim, we must dismiss this claim on procedural grounds.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December, 1964.