Award No. 4824
Docket No. 4652
2-SP(PL)-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES:

1. This grievance involves an incident wherein the Southern Pacific Company dispatched four Carmen from Roseville to augment Car Department forces in Sparks, Nevada.

2. That the company denied C. Malizio, R. Edgington, E. T. Jiminez and R. Penrod, Carmen, their right of employment with the Southern Pacific Company.

3. That accordingly the Carrier be ordered to make these employes whole by compensating them each 16 hours at the rate of $2.6968 per hour for the two days involved.

EMPLOYES STATEMENT OF FACTS: January 28, 1963, the Southern Pacific Company, hereinafter referred to as the carrier, dispatched four carmen, J. C. Ortiz, J. Barba, P. Tannura and R. Madsen, carmen regularly employed for the carrier at Roseville, California and employes holding seniority and only at that point, to Sparks, Nevada, under the direction of General Car Foreman R. Cannon to work on freight cars that were involved in derailment at Dodge, Nevada, January 21, 1963. These Roseville carmen worked on the Sparks repair track along with regular carmen employed at that point from 9:30 A.M. to 5:30 P.M., January 28, 1963. They again worked from 7:00 A.M. to 3:00 P.M., January 29, 1963, and during the period of time they worked on the following cars: SP 219368 and SP 206387. The work performed consisted of straightening safety appliance (grab irons and sill steps).

C. Malizio, R. Edgington, E. T. Jiminez and R. Penrod, hereinafter referred to as the claimants, were four of approximately thirty-two (32) furloughed carmen at Sparks, Nevada and were the first in seniority order to be called back at that point.

This dispute was handled in accordance with the agreement with all carrier officers authorized to handle disputes, all of whom declined to adjust it. The violation was called to the attention of Mr. Rock, the car foreman. However, correction was not made.

As set forth in "Carrier's Statement of Facts," paragraph No. 8, applications of Rule 14 of the current agreement had not been refuted in those cases which were reviewed with petitioner's general chairman in the conference of August 15, 1963. The facts involved in those prior cases reviewed establish that employes were used at seniority points other than their home points under the provisions of Rule 14 of the current agreement in addition to the regularly assigned forces at the latter points. By letter dated October 2, 1963 carrier's assistant manager of personnel directed the attention of petitioner's general chairman to the facts involved in cases referred to above, which facts are not refuted by the record herein.

Various cases selected at random involving the application of Rule 14 for dates both prior and subsequent to the effective date of the current agreement, which were reviewed with Petitioner's representative in conference August 15, 1963, are covered by Memorandum.

It is a principle too well established by all divisions of this Board to warrant citation that the burden of proving a disputed contention rests upon the party who relies upon it to maintain its position. This the petitioner has failed to do, and consistent with those awards the instant claim must fail.

CONCLUSION: Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it 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.

The Claimants are furloughed carmen at Sparks, Nevada, and the claim is that their rights of employment were denied them when four Roseville, California, carmen were sent to Sparks for two consecutive days' work straightening grab irons and sill steps on freight cars damaged in a derailment. Four carmen and one helper were then regularly assigned at Sparks, where formerly there had been a much larger force; at the time there were about 38 furloughed carmen, of whom the claimants were seniors. The agreement provides point seniority.

The carrier's position is that it sent the men out as contemplated by Rule 14, relating to "Regularly assigned employees *** sent out on a temporary transfer to an outlying point or shop." Sparks falls within the jurisdiction of the Master Mechanic at Roseville.

The Claimants' position is that this was a restoration of forces, and that they were entitled to be recalled to work under Rule 29(d), which reads as follows:

> "When restoring forces, employes will be called back in accordance with their seniority, if qualified and available within a reasonable time, and shall, if possible, be returned to their former positions."

The argument is that this temporary transfer of carmen to Sparks increased the force there by four men and therefore constituted a restoration of forces to

that extent. If so, it applies to all temporary transfers under Rule 14, which the rule nevertheless authorizes; but Rule 29 is entitled, "Reduction and Restoration of Forces", and relates to regularly assigned positions. All but paragraph (d) of Rule 29 relate to reduction of forces by laying off regularly assigned employes, and paragraph (d) relates to their restoration to those regularly assigned positions, and if possible, to their former ones. It is obviously inapplicable to the purely temporary need for employees at an outlying point or shop, for which Rule 14 provides. Here there was no re-establishment of regularly assigned positions within the intent of Rule 29, but merely a temporary transfer of regularly assigned carmen from another point.

In the handling on the property the Carrier cited numerous instances in which it had thus sent out carmen for temporary work without objection by the Organization. The General Chairman did not deny the practice, but replied:

> "These cases did not involve points that had furloughed employes where outside help was sent from other points."

In other words, the actual objection was not to employes' performance of work at other seniority points under Rule 14, but to the possible infringement of furloughed employes' contractual rights thereby. Therefore the question is what contractual rights of Claimants were affected.

In Award No. 4013, under a rule similarly recognizing the carrier's right to make temporary transfers, and a Rule 27 (d) substantially similar to the above Rule 29(d), this Division sustained the claim of furloughed employes, saying:

> "The right of the Carrier temporarily to transfer employes in appropriate instances is not challenged by the Claimants. But this right may not be exercised so as to violate or nullify the contractual recall rights of laid off employes under Rule 27 (d)."

The facts of that case were that some six weeks after abolishing the claimants' car repair positions at St. Maries, the carrier started sending car repairmen out from Spokane every day but Saturday and Sunday, thus in effect restoring forces at St. Maries with regularly assigned Spokane carmen instead of recalling the claimants to regular assignments. Under those circumstances this Division reasonably concluded that the claimants' recall rights had been violated.

This case is not like that in Award No. 4013; there was not a regular use of men from another point on a five day week basis, but a bona fide temporary transfer for two days, under Rule 14.

So far as the record shows, furloughed employes have never been available for temporary or extra work. Prior to its 1944 amendment Rule 20 provided that temporary vacancies (but not temporary positions) would be filled by furloughed employes. Subsequently Article IV of the National Agreement of August 21, 1954, authorized the use of furloughed employes to perform "extra work, and relief work on regular positions during absences of regular occupants;" but as adopted on this property, it was expressly limited to relief work. The work here involved was not relief work during absences of regularly assigned employes, but extra work for which the claimants were not obligated to remain available and the Carrier was not entitled to call them. But Rule 14 recognizes Carrier's right to send regularly assigned employes "on a temporary transfer to an outlying point or shop" for bona fide temporary extra work. As noted above the employes do not question that right where there are no furloughed employes, and under the current agreements the situation is

no different where there are furloughed employes but they cannot be used for temporary extra work.

Since the Carrier was not entitled to call the Claimants for this temporary work and they were not entitled to be called for it, their contractual right of employment was not denied by the Carrier's failure to call them.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

Keenan Printing Co., Chicago Ill. Printed in U.S.A.