

Award No. 4966
Docket No. 4738
2-CNO&TP-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. 21, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement by furloughing Carman W. J. Kelly at Somerset, Kentucky, and transferring or sending Carmen from Danville, Kentucky to Somerset, Kentucky, to perform the work in the Somerset Shop which was performed by Carman Kelly before being furloughed.

2. That the Carrier be ordered to discontinue these violations and pay Carman W. J. Kelly for five (5) days pay for March 27-28, 1963, five (5) days pay for April 2 and 5, 1963, and five (5) days pay for each additional violation until violations cease.

EMPLOYEES' STATEMENT OF FACTS: Carman W. J. Kelly, hereinafter referred to as claimant, was employed by the Southern Railway System (The Cincinnati, New Orleans and Texas Pacific Railway Company), hereinafter referred to as carrier, and established seniority in its Ferguson Shop, Somerset, Kentucky, April 1, 1925. Claimant was furloughed by carrier prior to June 1, 1962, leaving only one carman, namely, E. T. Bugg, Sr., employed at the point of Somerset, Kentucky. On March 27 and 28, 1963, a carman regularly employed and holding seniority at Danville, Kentucky, was sent by the carrier to Ferguson Shop, Somerset, Kentucky, to assist Carman Bugg in applying four (4) pair of wheels to car SL-SF 83522.

On April 2, 1963, an employe of Somerset Machine Shop was used to repair coupler and/or casting of engine No. 1953. Also, on April 5, 1963, the carrier sent one (1) carman regularly employed and holding seniority at Danville, Kentucky, to Ferguson Shop, Somerset, Kentucky, to apply truck springs to cars NYC726072 and P&LE1156.

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

Thus the evidence is conclusive that the controlling agreement was not violated and the claims which the Brotherhood here attempts to assert are not supported by it.

(2)

**THE BOARD IS WITHOUT AUTHORITY TO ORDER
RESTORATION OF THE POSITION OF
CARMAN AT SOMERSET**

Under the Railway Labor Act authority of the Board is restricted to deciding " * * * disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, * * * " (Sec. 3. First (i)). In view of this limitation placed upon the Board it is without authority to order restoration of the former position of carman at Somerset formerly occupied by Carman Kelly. This conclusion is fully supported by prior Board awards. For example in Second Division Award 4264, Referee Anrod, it was held:

"The Claimants have also requested that the Carrier be ordered to return the truck driving positions to them. Section 3, First (i) of the Railway Labor Act does not confer authority upon us to issue such an order. For this reason, we hereby deny said request. See: Awards 5572, 7168, and 7222 of the Third Division."

The conclusion is therefore inescapable that the Board is without authority to order Carrier to restore the former position of carman at Somerset.

CONCLUSION

Carrier has proven that:

(a) The controlling agreement was not violated and the claims are not supported by it. There was no "restoration of forces" within the meaning of Rule 26. Carrier was not under any contractual obligation to reemploy Carman Kelly. The car force was neither increased nor reduced when carmen were sent to Somerset from Danville under Rule 163.

(b) No carmen have been transferred from Danville to Somerset as alleged by the Brotherhood.

(c) The Board is without authority to order restoration of the position of carman at Somerset.

On the record only a denial award can be made. An award of any other type would be contrary to the agreement.

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 were given due notice of hearing thereon.

This claim involves the same parties, Agreement, claimant and circumstances as in Award No. 4703, which sustained a similar claim, and Award No. 4829, which denied one. Each claim involved only temporary work away from shops, under Rule 163, and not a regular assignment, under Rule 17 or Rule 26; the only essential differences are in dates involved.

Award 4703 quoted Award 3818, which stated that the car department and all carmen's positions at Franklin, Missouri, were abolished on February 13, 1958; that on February 15th and 16th two carmen were sent out from Parsons to make repairs at Franklin; and that despite the abolishment of the car shop, the claimant's seniority at the point still entitled them to perform the work of their craft there, to the exclusion of carmen from other points. Award 4703 concluded:

"Applying the reasoning of the above quoted Award, Claimant's seniority was not conditioned on maintaining a car department at Somerset; it gave him the seniority right to perform the work of his craft if and when it existed at that point as a furloughed employe."

In Award 4829 this Division declined to follow Award 4703, for the reason that it was based entirely on the reasoning of Award 3818, which related to entirely different parties, Rules and circumstances.

In declining to follow Award 3818, this Division said in Award 4829:

"In Award 3818 carmen's positions at a point had been abolished as of February 13, 1958, but as the regular work of those positions had not been completed the Carrier sent carmen out from another point to complete it on February 15 and 16; thus the two incidents were practically concurrent. The Carrier contended that this was emergency road service, which it clearly was not, and that the abolition of the positions at the point had abolished claimants' seniority there, which was equally untenable. Based upon the latter point, and without reference to any rule comparable to Rule 163, this Division reasonably sustained the claim. But the facts and issues of this case are entirely different from those there presented, and we do not consider Award 3818, or Award 4703, which is based entirely upon it, as persuasive here."

In Award 4829 this Division pointed out that Award 4013, also relied upon by the Employes, involved entirely different facts; it said, with reference to that case:

" * * * 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 regular forces at St. Maries with regular assigned Spokane carmen instead of recalling the claimants to regular assignments. Under those circumstances this Division properly concluded that the Claimants' recall rights had been violated. But this case

is entirely different; here there was not a regular use of men from another point on a five-day week basis, but a bona fide use of carmen as needed for the repairs of cars away from the shops on separate and unrelated occasions. Consequently Claimant's recall rights under Rule 26 were not violated."

Exactly the same arguments made in connection with Award 4829 are renewed here. In addition it is urged that in Award 4829 this Division failed to note that the 1952 amendment of Rule 30 expanding seniority from the point to the entire area under jurisdiction of the master mechanic did not lessen claimant's retention of seniority rights at his home point.

However, Award 4829 was not based merely upon the 1952 expansion of seniority, but upon the following facts, which are also controlling here:

1. That long prior to the 1952 change, Rule 163, a special carmen's rule had been adopted in 1937, providing as follows:

"When necessary to repair cars on the road or away from the shops carmen will be sent out to perform such work. * * *."

2. That Rule 163 necessarily expanded carmen's point seniority sufficiently to permit them to work on the road and away from shops.

Under similar rules and conditions, a carman at Hannibal, Missouri, with point seniority, claimed the right to carmen's work at Brookfield, eighty-five miles away, and their claim was sustained by this Division in Award No. 4849.

3. That the 1952 amendment to Rule 30, further expanded the seniority of all carmen within the master mechanic's jurisdiction to the entire area, including Somerset, thus entitling them to work there.

4. That if Claimant's seniority outranks theirs, his only rights to work, as against theirs, are the rights given him by the Agreement, namely, to outbid them for new vacancies and new positions, under Rule 17, and upon restoration of forces, under Rule 26.

5. That whatever Claimant's seniority rights are, he cannot claim the right to carmen's work as against junior carmen, under the circumstances of this case, to which Rule 163 clearly applies.

6. This Board must give full effect to the entire Agreement, including Rule 163.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.