Award No. 5163
Docket No. 4902
2-IT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier improperly withheld Carmen Helpers Roy Yates, James Hodge, Donald Schultz and E. M. Bond from service after they reported upon being recalled from furlough.

2. That accordingly, the Carrier be ordered to compensate these men as follows: Roy Yates – ten 8-hour days; James Hodge – ten 8-hour days; Donald Schultz – nine 8-hour days; and E. M. Bond – eight 8-hour days.

EMPLOYES' STATEMENT OF FACTS: The Illinois Terminal Railroad, hereinafter referred to as the Carrier, operates a freight car heavy repair shop at Federal, Illinois which is in Seniority District No. 3. This shop operates on a Monday through Friday work-week.

The Carrier decided to increase the forces at this shop and on April 17, 1964, sent registered letters to nineteen furloughed Carmen Helpers, including Roy Yates, James Hodge, Donald Schultz and E. M. Bond, hereinafter referred to as the Claimants, advising that it had vacancies for them at Federal Car Shops and to report for duty within ten days of date of said letter or their names would be removed from the seniority roster.

The letters were identical except for name and address of the recipient. Copy of the letter sent to Claimant Yates is attached hereto and identified as Employes' Exhibit A.

The Claimants reported for duty, ready for work, as follows: Yates and Hodge – April 20, 1964; Schultz – April 21, 1964; Bond – April 22, 1964. However, the Carrier refused to put them to work at this time and instructed them to come back May 4, 1964.

Rule 27. Carrier submits that, until claimants performed service for pay for the Carrier, they were not returned to active service and thereby covered by paragraph 4 of Rule 27. Since claimants did not perform service under pay until May 4, 1964, they did not come under the provisions of paragraph 4 until May 4, 1964. Claimants have not been furloughed since May 4, 1964 to the present date. We are, therefore, of the opinion that paragraph 4 of Rule 27 does not lend support to the claims. However, should the Board disagree, we are of the opinion that our only liability under the paragraph would be to pay each of the claimants four 8-hour days, and to the extent that claimants are seeking pay in excess of four 8-hour days, your Board should consider their claims excessive. In other words, Carrier is of the opinion that if claims are not denied, redress to the claimants should be limited to four 8-hour days each, i.e., April 28, 29, 30 and May 1, 1964.

In summary, Carrier submits that claims of the employes should be denied because:

1. Organization has not supported claims by citation of any rules violation.

2. No rules of the current effective Collective Bargaining Agreement have been violated by the Carrier.

3. The Organization desires your Board to add words or give an implied meaning to the Collective Bargaining Agreement which would require the Carrier to advise employes of the effective date of increases in forces and your Board does not have authority to do so.

4. The Organization desires your Board to settle this dispute upon equity consideration.

If claims are not denied, Carrier should not be required to pay each claimant in excess of four 8-hour days.

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.

Claimants were recalled by registered letter dated April 17, 1964 which reads as follows:

"We have vacancies for carman helpers at Federal Carshop.

Please report for duty within ten (10) days from date of this letter or your name will be removed from the carman helper seniority roster, Seniority District No. 3."

Within the said 10 days only 4 Claimants of the 19 furloughed employes returned to work. The intent of the Carrier was to find out how many of the furloughed employes would respond. The Carrier wanted to select the Claimants according to their seniority as of May 4, 1964.

The claim of the employes was denied by the Carrier. The Carrier and the Organization both cited Rule 27. The Claimants were put back to work on May 4, 1964 and have not been laid off since.

The rules do not make it mandatory on the Carrier to notify furloughed employes when they will be put back to work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

DISSENT OF LABOR MEMBERS TO AWARD NO. 5163

The majority states in the Findings that "claimants were recalled by registered letter dated April 17, 1964, which reads as follows:

> 'We have vacancies for carmen helpers at Federal Carshop.
>
> Please report for duty within ten (10) days from date of this letter or your name will be removed from the carman helper seniority roster, Seniority District No. 3.'"

Rule 27 of the current agreement, the applicable rules, reads as follows:

> "* * * * *
>
> In the restoration of forces, employes will be restored to service in accordance with their seniority if available within a reasonable time * * *."

The majority further states "Within the said 10 days only four claimants of the 19 furloughed employes returned to work * * *." This statement is typical of the majority's findings and is false as the claimants were not permitted to return to work until 17 days after the notice was served — that is May 4, 1964.

The majority then states "The intent of the Carrier was to find out how many of the furloughed employes would respond." The majority usurped its authority, as the above would be equivalent to revising the rule governing the recall of furloughed employes.

The majority also states "The Carrier wanted to select the Claimants according to their seniority as of May 4, 1964." Again, this is false as it will be noted that the registered letter as quoted above did not so state.

The majority further states "* * * The rules do not make it mandatory on the Carrier to notify furloughed employes when they will be put back to work." That is a most absurd statement. When furloughed employes are notified they are being restored to service they are entitled to start work immediately unless the notice as quoted above contains a specific date to begin work.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger

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