



Award No. 5739
Docket No. 5609
2-PC(NYC)-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(CARMEN)

PENN CENTRAL COMPANY
(formerly New York Central Railroad Company)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Controlling Agreement, particularly Rule 27 and Rule 31, when Carmen from Fultonham, Ohio a separate Seniority Point were sent into Claybank and Corning, Ohio, also a separate Seniority Point, to repair Freight Cars, thereby depriving Carman A. J. Perine of his contractual rights as the senior Carman on the Carman's Roster at Corning, Ohio.
2. That as a result thereof, the Carrier shall be ordered to compensate Carman A. J. Perine Five (5) days pay for each violation of his seniority rights, at the straight time rate, when carmen from another seniority point were used by the Carrier to perform work at Claybank and Corning, Ohio, Mr. Perine's Seniority Point.

(b) That the Carrier be ordered to refrain from violating the Seniority rights of Carman Perine hereafter.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. J. Perine was employed by the New York Central Railroad Company and is a Carman as per Carmen's special Rule No. 153 and, is the Senior carman on the carmen's seniority roster at Corning, Ohio, including Claybank and Rendville and adjacent Railroad Facilities.

Mr. Perine is furloughed and retains employment rights with the Carrier as a furloughed employee.

Mr. Perine was furloughed at Corning, Ohio in July of 1962, all other carmen being furloughed at Corning, Ohio in 1960.

On the following listed dates, carmen from another seniority point

"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." (Emphasis added)

Award 4824 recognizes in principle that there is no violation of the Controlling Agreement and no basis for claim of furloughed employees when Carman are sent out on the road to outlying points to perform their work on other than a regular basis. That is all that is involved in this dispute.

The claim should be denied.

CONCLUSION

Carrier has shown that:

1. The Agreement was not violated.
2. Rules in the Agreement support Carrier.
3. Rule 27 does not justify claim for 5 days pay each date.
4. Second Division Awards support carrier.
5. Claim should be denied.

All facts and arguments presented herein have been made known to the Employees either orally or by correspondence in the handling of the claim on the property.

(Exhibits not reproduced)

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.

Rule 31—SENIORITY contains the following provision:

"(a) Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft:" (Emphasis supplied.)

The following facts are set forth in Carrier's Submission:

"In July 1962 Carrier discontinued the last Carman position at Corning, Ohio due to insufficient work to warrant maintaining such position. As result thereof Carman A. J. Perine (Claimant herein) was furloughed at Corning, Ohio. The incumbent of this carman position at Corning, Ohio, also performed carman duties at Claybank, Ohio.

After discontinuance of the aforementioned position, Carman work at Corning and Claybank, whenever necessary, was performed by carman located at Fultonham, Ohio, located approximately 21 to 25 miles north of Corning and Claybank.

Corning and Claybank are located in one seniority point location for carmen. Fultonham is located in a separate seniority point location from Corning and Claybank." (Emphasis supplied.)

Further, Carrier admits that on the following dates Carmen with seniority at the Fultonham point were assigned to perform Carman work at the Corning-Claybank point: October 9, 12, 24, 1964; November 23 and 24, 1964; March 3 and 12, 1965; April 9 and 21, 1965.

The issue is whether Carman work at the Corning-Claybank point is contractually reserved to Carmen holding seniority at that point.

No question is raised as to Carrier's right to abolish all Carman positions at the Corning-Claybank point. The question is whether the furloughed Carmen, holding seniority at that point, have a continuing contractual right to perform work of their craft required by Carrier to be done in the area of their seniority point.

Carrier has pleaded "emergency," citing Rule 10. The plea is not supported by factual evidence supporting a finding of "emergency." The defense fails.

Carrier contends that having abolished all positions in the Corning-Claybank point it became an outlying point. Rule 32(b) requires that outlying points be mutually agreed upon. No such agreement as to Corning-Claybank was introduced in the record. The defense fails.

Rule 27—REDUCTION OF FORCES is cited by both parties in support of their respective contentions. The Rule, we find, contemplates that "senior qualified furloughed men" will be called to perform work of their craft at their seniority point when there is a need for Carman manpower at the point. See Award No. 4013.

Carrier in abolishing all Carman positions at the Corning-Claybank point did not and could not unilaterally abolish that point as a seniority point.

Yet, another defense argued by Carrier is that the work involved was "necessary to repair cars on the road" and assignment to the work was as provided in Rule 168. We construe the sense of the phrase "repair cars on the road" to mean locations other than seniority points. Therefore, Rule 168 is not applicable in the instant case.

In the status of furloughed employee the employer-employee relationship continues. The seniority point continues in existence. Ergo, Carman work at a particular seniority point is reserved to employees holding seniority in that craft at that point. See Award Nos. 3818 and 4703. Cf. Award Nos. 656 and 665. We will sustain paragraph 1 of the Claim.

As to paragraph 2(a) of the Claim: The record contains undisputed evidence that during the years 1962-1965 a large number of time claims were filed on behalf of Claimant herein because of Carrier having Carman

work performed at the Corning-Claybank point by employees not holding seniority at that point. By agreement of the parties those claims were settled on a call basis of two (2) hours and forty (40) minutes at time and one-half—four (4) hours straight time, at the hourly rate in effect, for each claim date. We sustain paragraph 2(a) of the Claim to that extent.

As to paragraph 2(b) of the Claim: This Board has no statutory authority to issue an injunction (cease and desist order). We will deny paragraph 2(b) of the Claim.

A W A R D

Paragraph 1 of the Claim sustained.

Paragraph 2(a) of the Claim sustained to the extent set forth in Findings, *supra*.

Paragraph 2(b) of the Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.