Award No. 6066
Docket No. 5934
2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Norfolk and Western Railway Company violated the Rules of Current Agreement when on the respective dates of February 19 and March 8, 1968, five (5) new Carmen Welders' jobs were established at its Roanoke Shops, which they refused to bulletin in accordance with Rule No. 17 of the Current Agreement, thus, depriving senior employes of their seniority rights, in the selection of the type work of their choice and damaging said employes to that extent.

2. That the Norfolk & Western Railway Company be ordered to comply with the Rules of Current Agreement and bulletin said five (5) new welders positions as required by Rule No. 17, of said Agreement.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains at Roanoke, Virginia a point on its line, a large and modern shop for the building, repairing, servicing and maintenance of Railway Cars, and equipment, employing several hundred carmen of various classifications.

During the month of October, 1967, carrier deemed it necessary to revert to a different car building program at its East End shops, and in doing so abolished five (5) welders' positions on October 31, 1967. On February 19, and March 8, 1968 carrier's new car building program made it necessary that five (5) new welding jobs be established, to fill newly created welders' positions on coil steel cars, which work had never been performed in the Roanoke Shops before, but instead of bulletining the said five new welders jobs and allowing the carmen welders employed in Roanoke Shops the privilege of exercising their seniority in the bidding of such preferred new jobs, five (5) furloughed carmen welders were recalled from furlough status and arbitrarily placed upon such new jobs.

avoid confusion and conflict. When rules 17 and 26 are correlated, it then becomes easy to understand that no "new job" or "vacancy" existed at the time in question and, therefore, none were required to be bulletined under the provisions of Rule 17.

It is noted that the employes request "That the Norfolk and Western Railway Company be ordered to comply with the Rules of the Current Agreement * * *." Regarding similar requests the board has consistently held, as it did in Award 3455:

> "This Board lacks authority to direct a carrier as to how it shall conduct its operation; we only have authority to interpret and apply the agreements of these employes of which the Railway Labor Act gives us jurisdiction."

To grant the claim of the employes in this case would require the board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties in this dispute. The board has no jurisdiction or authority to take any such action.

Carrier has shown that no violation of Rule 17 of the agreement has occurred, and that, in fact, it is not applicable in this dispute. The carrier has further shown that the issue to be decided is now moot and consequently no decision can be made regarding it.

The carrier asserts that there is no merit to the claim and respectfully requests that it be dismissed or denied in its entirety.

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 hereon.

Parties to said dispute waived right of appearance at hearing thereon.

When the program for manufacture of hopper cars was reduced at the Freight Car Shop of the Carrier's East End Shops at Roanoke in October, 1967, Carrier furloughed five or more welders. Work on coil steel cars created a need for additional welders during a couple of months in the spring of 1968 and again in the autumn. In February and March 1968 the Carrier recalled five of the furloughed welders for this work.

The Organization contends that the furloughing involved the abolition of the welding jobs and that when the need for additional welding work of a somewhat different kind arose a few months later, new jobs or vacancies were created which should have been filled by posting under Rule No. 17 on Filling Vacancies. The Carrier contends that furloughing of employes does not auto-

matically abolish jobs; that the furloughed employes retained their welder seniority even though they exercised their carman rights; that when need for additional welders arose, Carrier was required to recall the furloughed welders by the provision in Rule No. 26, which states that "In the restoration of forces men will be returned to service according to seniority if available within a reasonable time, and if furloughed less than one year shall be returned to their former positions if possible"; and that the issue is now moot, in that there has been no welding on coil steel cars since October 1968.

Although the precise question here involved is moot in the sense that the relief requested in claim 2 would no longer be appropriate even if claim 1 were to be sustained, the issue is one that may well arise from time to time. We therefore hold, as we did in Award No. 3742, that claim 1 should not be dismissed without a ruling.

We concur in Carrier's contention that furloughing of employes does not automatically involve job abolition. No job was abolished in October, 1967. Although some men were furloughed, the position of welder or carman welder continued in existence and a number of men continued to be employed as such in this shop. When a temporary need for additional welders arose a few months later, no new job was created. If the Organization's contention that furloughing automatically abolished a job were accepted, it would never be possible to return a furloughed employe to his previous position, as required by Rule No. 26.

The basic question is whether welding as performed in this shop is one job or whether it is by agreement or past practice subdivided into several special types of welding jobs. The Organization apparently assumes that if the vacancies had been bulletined, they would have been designated as "Welder on Coil Steel Cars" and that men then employed as welders could have bid on them. As far as can be determined from the record in this case, it seems probable that they would have been bulletined simply as "Welder." Since there were men on the welder seniority list who were unemployed or were doing other than welder work, Carrier was obligated to follow Rule No. 26 rather than Rule No. 17 and to recall, as it apparently did, those with highest welder seniority who either were on furlough or were doing other than welder work.

Rule No. 17 states in pertinent part:

> "When new jobs are created or vacancies occur in the respective crafts, the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined."

We are of the opinion that a vacancy in the craft does not arise in this sense so long as there are men on the craft seniority list who are not working in the craft and desire to do so, provided all welding work is considered as one job and not subdivided into separate special types of agreement, understanding, or past practice.

We can well understand that some of the men engaged in general repair welding may have preferred to perform the coil steel car welding, in spite of its brief duration, but we find no showing that anything in the Agreement or

in past practice requires the Carrier to treat that particular work as a separate and distinct job. We therefore find that Carrier did return the furloughed men to their former positions, as required by Rule No. 26.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.

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