



Award No. 6125
Docket No. 5993
2-IC-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman M. J. Cantrell was denied his rights of exercising his seniority to displace junior employe on December 21, 22, 23, 24, 26, 27, 28, 29 and 30, 1968.

2. That accordingly the Illinois Central Railroad be ordered to compensate Carman M. J. Cantrell eight (8) hours at the straight time rate for December 21, 22 and 23, 1968; eight (8) hours at the time and one-half rate for December 24, 26, 27, 28, 29 and 30, 1968.

EMPLOYEES' STATEMENT OF FACTS: Carman M. J. Cantrell, hereinafter referred to as the claimant is employed at Mays Yard, New Orleans, Louisiana.

The facts of the claim are that on Friday, December 20, 1968, which was claimant's rest day, he received a call from the car foreman that due to the longshoremens preparing to go on strike at 6:00 P. M., the Illinois Central Railroad was closing down the prepare track at Mays Yard, effective the following morning, and due to this, claimant had been rolled off his job on the 7:00 A. M. to 3:00 P. M. shift by a senior employe. Claimant had to take a job on the 3:00 P. M. to 11:00 P. M. shift, after being assured by the car foreman that no junior employes would be working on the daylight shift. Claimant was unable to start his job on Saturday, December 21st, and was told to report on Sunday, December 22nd. However, on reporting for his job on December 22nd, he passed the prepare track and saw about ten (10) junior employes working the 7:00 A. M. to 3:00 P. M. shift. On inquiry of the assistant general car foreman, claimant was told that the junior employes were called in to work Saturday, December 21st, to work the cars on the prepare track, but on a day to day basis. Claimant then informed the foreman he would work the daylight job on a day to day basis, but was refused and wouldn't allow him to displace one of the junior employes. The claim for eight (8) hours' pay at the straight time rate for December 21, 22 and 23, 1968 is submitted due to claimant being

rest days of the train yard position. Under no circumstances would Mr. Cantrell have had a right to work those days or, to alternate, the penalty pay claimed.

The company asks the Board to dismiss or deny the claim.

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.

Claimant lost his regularly assigned position through the exercise of seniority by another carman whose position had been abolished. When this occurred, Claimant was given the opportunity to and did bid on another position which his seniority entitled him to hold.

The controlling contractual clauses are Rule 18 (Filling Vacancies), Rule 28 (Reduction and Restoration of Forces) and Rule 58 (Displacing Junior Employes).

The record indicates that the force reduction affecting certain junior employes was made in strict accordance with Rule 28 of the Agreement. The Claimant alone must accept full responsibility for his refusing to work December 21, 22, 23, 26 and 27.

Since the record indicates that no vacancies existed on the first shift, and claimant had a regular position we find no contractual right which could have been used to displace other employes.

Furthermore, it appears that Claimant was gainfully employed on December 24, 28, 29, 30, 1968 and throughout that period suffered no monetary loss. There is no provision in the Agreement for the penalty sought.

We find the petitioner has not sustained the burden of proof.

Under all these circumstances the claim will not be allowed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

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