Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6583
Docket No. 6452
2-LV-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 96, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(J. F. Nash and R. C. Haldeman, Trustees of the Property of Lehigh Valley Railroad Company, Debtor

Dispute: Claim of Employes:

That within the meaning of the controlling agreement the Carrier unjustly dealt with Carmen Felix Corni, Walter Rodney, Richard Vienna, John LoVetro and William Maslyn, when they assigned work properly belonging to Carmen at Manchester, N.Y. to be performed by Carmen having no seniority in the Manchester, N.Y. seniority territory. And also to employes in the section crew of the M of W Department.

That the Carrier be ordered to compensate the above named each one days' wages at their applicable rate of pay for each respective violation shown below.

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, all Carmen assigned to positions at Manchester, N.Y., were furlough October 1, 1971, leaving one Carman at this seniority point. Subsequently, on six days in October and November 1971, Carrier assigned Carmen from Sayre, another seniority point, and allegedly employees from other crafts, to perform work in the Manchester territory. The work involved rerailing cars or engines on five days and changing wheels on one date.

Petitioner argues that Carrier violated Rule 31 by its actions. That Rule reads in part:

"Seniority of employees in each craft covered by this agreement shall be confined to the point employed on the Maintenance of Equipment Department....

First, with respect to employees of other crafts performing work belonging to Carmen in the Manchester area, it must be noted that Petitioner has failed to support this allegation with evidence. The mere assertion is not sufficient for the Board to find a violation of the Agreement.

Carrier takes the position that the work in question was emergency work, permitting the Carrier to use available and qualified employees,"despite seniority ranking". We find no Rule Support or evidence in the record to establish the fact that the work in question was "emergency work". In fact one of the work situations involved herein related to a car being retracked on October 15, 1971 and the wheels on this car changed on October 21, 1971; apparently not an emergency.

Carrier argues further that Carmen do not have the exclusive right to perform the work in question, and cites a number of Awards to support this contention. We have studied the Awards cited and find no fault in general with the reasoning represented; however, we find that they deal almost exclusively with wrecking crew activities and have no bearing on this dispute. It should be pointed out that in this matter Carmen were used to do the work and the issue of exclusive right to the work is irrelevant.

In Award 5739, in a related factual and rule matter, we said:

> "In the status of furloughed employe the employer-employe relationship continues. The seniority point continues in existance. Ergo, Carman work at a particular seniority point is reserved to employes holding seniority in that craft at that point."

Similarly, Award 3818 holds that furloughed employees were entitled to Carmen's work in preference to Carmen from another seniority point. In this dispute we shall sustain the claim except that we will allow pay for four days only, since those are the only days when Carmen from another seniority point were assigned to the Manchester territory. The other two days involved the unproved use of employes from other crafts.

A W A R D

Claim sustained in accordance with Findings above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.