

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7014
Docket No. 6791-T
2-B&O-MA-'76

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, AFL-CIO
(
(The Baltimore and Ohio Railroad

Dispute: Claim of Employees:

1. That under the controlling Agreement, the Baltimore and Ohio Railroad Company damaged Motor Car Repairman (Machinists) R.A. Clary, of the Western Region Rail Laying Forces, when they furloughed him on October 20, 1972 and then assigned a Toledo Division Sheetmetal Worker (Water Station Force) D. Spence, to perform machinists work in maintenance of the Western Region rail laying equipment.
2. That accordingly, the Carrier be ordered to compensate Claimant eight (8) hours pay at pro rata rate for each working day from the date of October 20, 1972, until recalled. Also coverage under Travelers Insurance Policy GA-23000.

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.

The Claimant was a Motor Car Repairman and a member of the Machinists Union assigned to the Western Region Rail Laying Force in the Maintenance of Way Department. He was the senior repairman in that unit with seniority dating back to 5-21-70. The Western Region Rail Gang operated under the supervision of a System Rail Supervisor and had an authorized force of 75 employees and was assigned 28 machines or pieces of equipment. It performed work in connection with the 1972 Rail Program.

Normally, the work of the Western Region Rail Gang would be completed toward the end of September each year and the rail laying equipment was put in the shop for the winter months for overhaul. The employees would be furloughed until the program started up for the next year. On September 29, 1972 all but 17 of this unit were furloughed. Claimant was not furloughed with the others because he was repairing equipment and he was permitted to finish such work and then he was furloughed on October 20, 1972.

It is the Carrier's contention that the Western Region Rail Gang was abolished when the bulk of its employees were furloughed on September 29, 1972. Following this a small division force was established in the Toledo-Indianapolis Division and placed at Hamilton, Ohio under the jurisdiction of the Division Engineer. Its assignment was to prepare tracks and lay some patch welded and jointed rail on various tracks in the area. This force was made up of the 17 employees formerly assigned to the Western Region Rail Gang with 12 of the 28 pieces of equipment used by that gang. This force worked in the Hamilton area until January 29, 1973. During this time necessary repairs and maintenance work for the rail laying machines used was performed by a member of the Sheet Metal Worker's Union. Certain repair and maintenance work was carried out by machine operators during this period.

The Organization contends that the Western Region Rail Gang was never abolished. It maintains it was cut back severely on September 29, 1972 but the remaining 17 continued on with the 12 pieces of equipment. Claimant, as senior and only car repairman, was entitled to perform the maintenance and repair work on equipment used by this force during this period. In support of this contention the Organization points to the letter from Division Engineer Perko, dated January 11, 1973, which is quoted here in full:

"Dayton, Ohio
January 11, 1973
TI-MW-92

Mr. Richard A. Clary
70 Prospect Avenue
Chillicothe, Ohio 45601

Dear Mr. Clary:

This will acknowledge receipt of your letter of December 18, 1972 claiming eight (8) hours per day since October 20, 1972 account of being furloughed as an equipment repairman on Western Region Rail Gang and such duties assigned to a Toledo-Indianapolis employee.

The number of men in the Western Region Rail Gang was greatly reduced at that time. Because of the reduction in force, the machinery was not used as extensively as before the reduction and a mechanic was not necessary.

"In view of the above, your claim is declined.

Yours very truly,

George Perko
Division Engineer
32 N. Webster Street
Dayton, Ohio 45402"

This matter was the subject of discussion on several occasions and, following the sequence in the record, it was not until the letter of August 2, 1973 that Carrier made clear its position that the Western Region Rail Gang had been abolished and a division force consisting of these 17 men and the 12 pieces of equipment was formed.

Both parties are in agreement that in the Toledo Division, divisional equipment repairmen are selected from the Sheet Metal Workers rather than the Machinists. If, however, the Western Region Rail Gang was continued under a reduced force the repairman would properly be a member of the Machinists, and specifically would be Claimant.

The Western Region Rail Gang operates over approximately five divisions in rail laying including the Toledo-Indianapolis Division. In addition, this unit has a separate seniority identity. Of the 17 employees who continued with the force only 4 had a seniority base in the Toledo-Indianapolis Division.

The record discusses a jurisdictional matter relating to the Machinists and the Sheet Metal Workers. Two letters in the record from the President of the Sheet Metal Workers indicate that his members do not claim work on the Western Region Rail Gang but they do claim rights over maintenance and repair work of Maintenance of Way equipment used by the division forces of the Toledo Division. The Machinists, for their part, do not disagree with this view of the so-called jurisdictional matter.

The question, therefore, is whether or not the Western Region Rail Gang was abolished and then succeeded by the divisional force. There is nothing in the record to indicate that a notice or bulletin was posted to this effect. And, a review of the applicable collective bargaining agreement does not indicate that one would have been required under these circumstances beyond the usual furlough notices to the individual employees. There are allegations by the Organization in the record that Carrier's representative admitted verbally that the agreement had been violated. These allegations, in effect, are denied by Carrier.

There is no argument that Carrier had the right to abolish the Western Region Rail Gang. In addition, Carrier had the right to establish a small divisional unit as it claimed that it did. Carrier also had the right to

utilize its equipment and assign machines to either Region gangs or Division gangs as the needs of its operations required. We are less disturbed by rights here than we are by what actually happened.

Although the evidence is not abundantly clear we believe it meets the minimal tests required to support Claimant's burden of proving that he was improperly furloughed. In this regard we take note of the following: 1) The letter of Division Engineer Perko, dated January 11, 1973, appears to be **inconsistent** with Carrier's position that the Western Region Rail Gang had been abolished on or about September 29, 1972. It is not without ambiguities and we do not subscribe to all that the Organization claims regarding it. Nevertheless, it purported to answer Claimant's claim of December 18, 1972, and, when it is realized it is written by one who was peculiarly positioned to know the facts, there is a necessary conclusion that it lends support to the view that the regional unit had never been abolished. 2) There is ample evidence in the record that a Sheet Metal Worker had replaced Claimant to do equipment repair work for the unit on or about October 21, 1972 (the day following Claimant's furlough). Certainly, the Division Engineer would have been aware of this assignment and the omission of this fact in his letter lends further support to Claimant's view. 3) It was not until months after the assignment that Carrier provided the explanation that the regional force had been abolished and a divisional force had been created in its place. The record indicates this explanation was first advanced at the conference on the property on June 7, 1973 and subsequently first confirmed in writing in the letter dated August 2, 1973. We conclude that this late explanation, coupled with the earlier points, lends support to Claimant's view.

In addition, the circumstances here generate a degree of suspicion. It is claimed that the same men, working the same equipment, performing essentially the same kind of work were transformed from a regional force to a divisional force. We are lead to believe by the record that this change had seniority implications. Yet there is nothing in the record by way of notice, bulletin, or other objective evidence that substantiates this change-over. It is not sufficient to answer that Carrier did not have a contractual obligation to provide such notice. Under the circumstances here, the development of proof would seem to require that Carrier satisfy the burden of going forward and produce evidence that would support its story. None was produced and it can hardly be urged that the appointment of a Sheet Metal Worker would satisfy this requirement. The propriety of that appointment is the very matter in issue.

One difficulty in this case is that the submissions before this Board by the Carrier and the Organization have the same fault. Both beg the very question in dispute. As a consequence the arguments advanced are lacking in clarity. We believe the points made herein are not new to the case and are based upon sufficient references in the record to permit decision by this Board.

We conclude this claim must be sustained and Claimant is entitled to reimbursement for straight time pay only from the date of his furlough until January 29, 1973, not to exceed the hours actually worked in such repair and maintenance. We have no basis for awarding reimbursement or coverage for insurance and that aspect is denied.

A W A R D

The claim is sustained in accordance with the findings.

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 12th day of March, 1976.