

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 16, (Formerly System Federation
(No. 57) Railway Employees' Department, A. F. of L. -
(C. I. O. (Carmen)
(
(Norfolk and Western Railway Company (formerly The
(New York, Chicago and St. Louis Railroad Company)

Dispute: Claim of Employees:

1. That under the Current Working Agreement the Carrier improperly allowed Carman V. Cook, furloughed at Narlo, Ohio, October 2, 1974, to perform extra work at Bellevue, Ohio, Car Shop, beginning October 3, 1974.
2. That the following Carmen, as listed below, be compensated eight (8) hours at time and one-half rate each day worked by Carman V. Cook at Bellevue, Ohio, from October 3, 1974, and each day worked thereafter, as follows:

October 3, 1974.....	A. Meyer
October 4, 1974.....	R. Tennill
October 5, 1974.....	P. Stines
October 6, 1974.....	A. Contos
October 7, 1974.....	R. Smith
October 8, 1974.....	J. Ratliff
October 11, 1974.....	E. Headrick
October 12, 1974.....	K. Beier
October 13, 1974.....	R. Miller
October 14, 1974.....	R. Smith
October 15, 1974.....	J. Ratliff
October 18, 1974.....	A. Swander
October 19, 1974.....	H. Eichenlaub
October 20, 1974.....	M. Guhn
October 21, 1974.....	H. Shaw
October 22, 1974.....	R. Stape
October 25, 1974.....	A. Swander
October 26, 1974.....	R. Tennill
October 27, 1974.....	D. Hoskins
October 28, 1974.....	H. Shaw
October 29, 1974.....	R. Bilbrey
November 1, 1974.....	R. Dempsey
November 2, 1974.....	V. Ohl
November 3, 1974.....	D. Hoskins
November 4, 1974.....	W. Myers
November 5, 1974.....	R. Bilbrey

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.

This dispute is based on the contention of the Employees that Carrier improperly assigned Carman V. Cook to work at Bellevue, Ohio where he held no seniority. Carman Cook was temporarily furloughed at Narlo, Ohio due to work stoppage of a major shipper. He was assigned at Bellevue, Ohio to a position with the same rest days of the position at Narlo. That position was not posted for bulletin to afford Carman holding seniority at Bellevue the opportunity to exercise their seniority preference.

Claims were instituted in behalf of off-duty Carmen holding seniority at Bellevue for each day Carman Cook worked at that point, alleging a violation of Rules 16 and 28.

Carrier contends that the Local Chairman at Bellevue agreed to the interim employment of Carman Cook without the necessity of bulletening the position. The Local Chairman furnished a signed statement denying that contention. We need not resolve that issue here. This Board has long held that local officials and Local Committees may reach agreement to implement existing rules or agreements, but they may not make binding agreements or change existing agreements. See Second Division Awards 3111 and 4755.

Carrier employed Carman Cook to perform Carmen's work at Bellevue without demonstrating a need for additional manpower and making such position available to Carmen holding seniority at that point. A strick application of the agreement requires that Claim No. 1 be sustained. See Second Division Award 3163.

The record shows that Carrier's action was in good faith and designed to furnish interim employment to Carman Cook for the duration of the industrial work stoppage at his home point. It is further noted in Carrier's Submission it contends Carman Cook had a contractual right to displace less than four-year Carmen employed at Bellevue, which he chose to do; that the arrangements made were to avoid such displacement for the interim period. We fail to find where the Employees refute that contention in their Rebuttal. Claimants were fully employed, but that alone is not an estoppel to damages. We find, however, under the circumstances here in existence Claim No. 2 should be denied.

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Award No. 7289
Docket No. 7118
2-N&W-CM-'77

A W A R D

Claim No. 1 is sustained.

Claim No. 2 is denied.

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 29th day of April, 1977.

