

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Bonafide Carman, M. W. Napier, furloughed at Newport News, Virginia, August 11, 1977 properly requested and was unjustly deprived from displacing a tentative carman at Fulton Yards, Richmond, Virginia, in violation of "Guidelines to be followed with respect to bonafide carmen who are furloughed at one point and desire to displace a tentative carman at other seniority points on the Chesapeake District of the Chesapeake and Ohio Railway Company", dated December 11, 1970.
2. Accordingly, Napier is entitled to have his name placed on the bonafide carmen's seniority roster at Fulton Yard, Richmond, Virginia with a seniority date of August 17, 1977. Also Napier is further entitled to full rights and benefits of which he was deprived of until his request is complied with.

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 thereof.

Because of a wildcat strike situation in the coal industry, claimant, a bona fide carman at Newport News, Virginia, was furloughed effective August 11, 1977.

By letter dated August 15, 1977, claimant made a request to displace effective August 18, 1977, a tentative-carman at Richmond, Virginia, as permitted by the provisions of a set of agreed-upon "Guidelines" dated December 11, 1970. This set of "Guidelines" dated December 11, 1970 provide as follows:

"GUIDELINES TO BE FOLLOWED WITH RESPECT TO BONA FIDE CARMEN WHO ARE FURLOUGHED AT ONE POINT AND DESIRE TO DISPLACE TENTATIVE-CARMEN AT OTHER SENIORITY POINTS ON THE CHESAPEAKE DISTRICT OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY

"(Applicable only to employes holding seniority as bona fide carmen
on the Chesapeake District of C&O)"

1. Bona fide carmen furloughed at Point 'A' and who made proper request would be permitted to displace tentative-carmen at other seniority points upon written request provided it was considered by the local supervision at the point at which they desired to displace that the bona fide carmen were qualified to perform Carrier's service requirements as they existed at the point at which they desired to displace a tentative-carmen. Where there was question as to the qualifications of an individual employe the individual would be given not to exceed a three day trial period to determine whether the employe was or was not qualified. However, if in the judgment of the local officers employe in question can qualify with a few additional days time, additional time may be given. If the employe was not qualified displacement would not be permitted. A bona fide carman furloughed at Point 'A' desiring to go to any other seniority point must make request to do so within thirty days from the effective date of his furlough; otherwise, any consideration for transfer will be under the provisions of Rule 29 and applicable only as additional vacancies occur.
2. Bona fide carmen requesting to make displacement in line with the above would be required to give one day's advance notice to the local supervision at the point at which they desired to displace a tentative-carman.
3. Tentative carmen and/or others being released as a result of bona fide carmen displacing could be immediately furloughed since no force reduction was involved and no five day notice would be required to the ones being furloughed as a result of such handling.
4. When a bona fide carman who is furloughed went to another point to displace a tentative-carman the junior tentative man at the point at the time would be displaced and the carman so displacing would establish seniority and after initially establishing seniority with further changes, exercising of seniority, etc., would be on the basis of the general agreement rules.
5. Bona fide carmen who were furloughed and were subsequently given recall notice would not be permitted to displace tentative-carmen at other points after notice of recall.
6. Bona fide carmen will not be released from a point at which tentative-carmen are working for the purpose of going to other seniority points at which vacancies might exist. Consideration, however, would be given to making an exception in hardship cases.

- "7. Bona fide carmen who are on temporary furlough as is practiced during miners' vacations, Christmas holiday, etc., will not be permitted to displace tentative-carmen at other points.

Office of Director of Labor Relations
December 11, 1970"

Claimant's request to displace a tentative carman at Richmond was denied by Carrier because of the temporary nature of the furlough. Claimant was recalled to his carman's position at Newport News on August 26, 1977.

Subsequently, by letter dated August 29, 1977, a claim on behalf of claimant was initiated which requested:

"We, therefore request that Mr. Marvin W. Napier's name be placed on the carmen's seniority roster, Fulton Yard, Richmond, Va. effective 8/17/77 3:00 P.M. (sic) with full rights and benefits, any of such as the employee may have been deprived of until above request is complied with."

It appears to this Board that the cause of complaint did not exist at the time of the formal claim was initiated. The entire issue became moot as of the time claimant was recalled to his bona fide carman assignment on August 26, 1977.

This Board has consistently refrained from making any determination on an issue which is simply nonjustifiable. What was said in Second Division Award No. 6143 (McGovern) is equally applicable here. There we wrote:

"*** It is not a justifiable case or controversy in its present posture and we will accordingly deny the claim."

Accordingly, we will deny this claim as well.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1980.