

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 27, 28, 94, 99 and 100 of the Shops (sic) Craft Agreement and the 1975 National Agreement, Article VI, "coupling and air test", when on January 23, 1982 they furloughed all the Carmen that had seniority at Portal, North Dakota and transferred the work to the Trainmen and Carmen from another seniority point.
2. That the Soo Line Railroad Company be ordered to compensate Carmen Leo Ceglowski, Ernest Swenson, James Heitz and Steven Gunderson, that have seniority on the Carmen's roster at Portal, North Dakota for 612 hours at overtime and 137 hours at straight time, Carmen's rate for Carmen's work transferred to the Trainmen and 829 hours at straight time and 234 hours at overtime for Carmen's work performed by Carmen from another seniority point, Harvey, North Dakota at Portal Repair Track and areas where the Portal Carmen had historically performed Carmen's work. The above hours to be divided equally among the Carmen. Hours claimed were from January 23, 1982 and thru August 26, 1982. This being a continued violation by the Soo Line Railroad Company, record of further hours are being recorded and submitted until claim is settled.

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 employes 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 UTU was advised and did file a submission.

Claimants, L. Ceglowski, E. Swenson, J. Heitz, and S. Gunderson, were employed as Carmen at the Portal, North Dakota, repair facility of the Carrier, Soo Line Railroad Company.

Effective January 23, 1982, the Carrier furloughed the Claimants from the Portal facility. Freight car repair and derailment work previously done at Portal was transferred to Carmen at Harvey, North Dakota; the coupling, inspecting, and air testing that was performed by the Portal Carmen was transferred to the Trainmen at Portal. By mid-February 1985, all four Claimants had been transferred to Carmen positions at Harvey; one of the Claimants resigned within a week of his transfer.

The Organization filed a claim on behalf of the Claimants, seeking compensation at both the straight-time and overtime rates for the Carmen's work that was transferred to Portal Trainmen, and for Carmen's work performed by Harvey Carmen at the Portal facility where Portal Carmen historically performed Carmen's work.

The Organization contends that the Portal and Harvey facilities are separate seniority points. The Organization argues that the Carrier violated Rule 27 of the current Agreement because it assigned Carmen holding seniority at Harvey to perform work at Portal. Rule 27 provides in part:

"Seniority:

1. Mechanics, helpers and apprentices of each craft will be shown on their respective point, Craft seniority list separately.
2. Seniority of employees in each craft covered by this Agreement shall be confined to the point employed, except that seniority of Carmen at each point shall be subdivided..."

Because the Claimants were regularly employed, available, and hold seniority at Portal, the Organization contends that they are entitled to the requested compensation.

The Organization additionally maintains that the Carrier has not proved that there was insufficient Carmen's work at the Portal facility; instead, the number of hours of Carmen's work performed at Portal by Trainmen and Harvey Carmen shows that Carmen were needed at Portal. The Organization argues that because Carmen were needed at Portal, the Carrier violated the assignment of work rules when it assigned Trainmen to perform Carmen's work.

Finally, the Organization contends that the Claimants were unjustly denied the opportunity to perform the work to which they were entitled at Portal; the Organization argues that the claim should be sustained, and the Claimants should be awarded the requested compensation.

The Carrier contends that it is not required to retain Carmen at facilities where there is insufficient work to justify their employment. The Carrier asserts that the Claimants retain their point seniority as provided in Rule 27, and will be called back when there is sufficient Carmen's work at the Portal facility.

The Carrier also points out that the coupling and inspection work is not exclusively reserved to Carmen, but is routinely performed by Trainmen at several points throughout the system. The Carrier asserts that because there was insufficient work to justify assigning Carmen to the Portal facility, this work was properly transferred to the Trainmen.

In addition, the Carrier maintains that the Organization's records of time claims for trains made up at Portal do not reflect the actual amount of work performed; these records reflect the minimum 2 2/3 hours compensation claim, not the actual time spent in performing the work. The Carrier therefore argues that these records do not show that there was sufficient work for Carmen at the Portal facility.

The Carrier further asserts that the language of the Agreement was drafted so as to allow the Carrier to determine whether there is sufficient work for Carmen at each location. The Carrier argues that the records for July through December 3, 1982, accurately reflect the sporadic nature of Carmen's work at Portal; such sporadic work is within the planned utilization of road truck. The Carrier contends that it was therefore appropriate for the Harvey road truck to perform car repairs at Portal. Further, the Carrier submits that the Special Board of Adjustment No. 570 has held that there is no transfer of work when a territory is extended to cover areas that had been protected by assigned employees prior to the abolition of their positions.

Finally, the Carrier argues that if this claim should be sustained, any award to the Claimants should be off-set by their earnings. With respect to the Claimant who resigned his employment, the set-off should be calculated by the wages he could have earned. The Carrier contends, however, that the claim should be denied.

This Board has reviewed all of the evidence in this case, and it finds that although the Claimants held seniority at Portal, the Carrier had the right to abolish their positions. On this record there has been no showing that the coupling and inspection work at issue is exclusively reserved for the Carmen and cannot be performed and has not been performed by other categories of employees. (See Award 10021.) Hence, the claim must be denied.

*It is fundamental that this Board is not in a position to require a Carrier to reestablish a position. That decision falls within the clear right of management. If the Carrier believes it no longer needs certain positions, it has the right to abolish those positions. Article VI was drafted in such a manner to allow a Carrier to make alterations in the work force when there are changes in business to justify them. This Board will not second-guess management in those decisions.*

*Since there was no violation of the rights of the Claimants, it is not necessary for us to rule on the question of damages.*

A W A R D

*Claim denied.*

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

*Dated at Chicago, Illinois, this 25th day of September 1985.*