

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10795
Docket No. 10762
2-MC-CM-'86

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

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

Dispute: Claim of Employees:

1. That the Maine Central Railroad Company (hereinafter referred to as the Carrier) violated the provisions of the current Agreement; specifically Rules 26 A, paragraph (a), 28, paragraph (c) and letter of Agreement dated August 6, 1980, on April 2, 1983, when Carrier improperly assigned a Carman from another seniority point to perform Carman's work at Riley's Maine.

2. That accordingly, the Carrier be ordered to compensate R. M. Hodgkins (hereinafter referred to as the Claimant) eight (8) hours at the Carman's time and one-half rate of pay on account of violation.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant R. M. Hodgkins is employed as a Carman by the Carrier, the Maine Central Railroad Company. The Claimant's seniority date is December 27, 1967, and his seniority point is Rumford, Maine.

On April 2, 1983, the Carrier assigned Carman P. P. Perry from the Lewiston, Maine, seniority point to perform Carman's work within the Claimant's territory at Riley's, Maine, which is part of the Rumford seniority point. At this time, the Claimant was furloughed from his seniority point, but was available to perform the Carman's work assigned to the other Carman on April 2, 1983.

The Organization filed a Claim on the Claimant's behalf, charging that the Carrier violated the Controlling Agreement when assigned a Carman from another seniority point to perform Carman's work in the Claimant's seniority territory.

The Organization contends that the Carrier violated Rules 26A(a) and 28(a) of the Controlling Agreement. Rule 26A(a) provides:

"(a) Seniority of employes in the Mechanical Department, in each craft or sub-divisions, shall be confined to the point employed. (See Note No. 1).

Note No. 1 - - In so far as Carmen's Craft concerned - -

Bangor and Bucksport - - one seniority point.
Rumford and Livermore Falls - - one seniority point."

Rule 28, Assignment of Work, provides:

"(a) None but Mechanics or Apprentices regularly employed as such shall do Mechanics work as per special rules of each craft, except Foremen at points where no Mechanics are employed."

The Organization contends that these Rules establish that seniority is confined to the point of employment, and all Carmen's work existing at a seniority point accrues only to the Carmen on that point's Seniority Roster.

The Organization further contends that work that is contractually reserved to Carmen at a seniority point where all Carmen are on furlough status must be assigned to the furloughed Carmen. The Organization therefore asserts that the Claim must be sustained, and the Claimant compensated in the amount of eight (8) hours' pay at the Carmen's time and one-half rate of pay.

The Carrier asserts that on April 2, 1983, the regularly assigned Rumford Carman was assigned to perform the work that is the subject of this dispute. The Carrier assigned a Carman from another seniority point to assist in the work because the regular Rumford Carman could not perform the work alone. The Carrier asserts that the other Carman merely assisted the regular Rumford Carman, and that the work he performed was incidental to the regular Carman's work.

The Carrier points out that Rule 26A relates to seniority that is confined to the point of employment. The Carrier asserts that the Claimant holds seniority at Rumford Yard; the disputed work, however, was performed by the regularly assigned Rumford Carman at an outlying point. The Carrier therefore asserts that it did not violate Rule 26A.

The Carrier points out that Rule 25(a) of the Controlling Agreement provides:

"The Carrier shall have the right to use furloughed employees to perform relief work on regular positions during absence of regular occupants. . . . It is also understood that the Carrier retains the right to use the regular employee under pertinent rules of the Agreement rather than call a furloughed employee."

The Carrier asserts that the disputed work was neither work of a regular position nor was it performed during the absence of the regular occupant; rather, it was performed to assist the regular occupant. Further, the Carrier argues that Rule 25 preserves the Carrier's prerogative to use Carmen from other seniority points.

The Carrier additionally maintains that under past practice, it has not been required to recall furloughed Carmen for such incidental work. The Carrier argues that it is not required to recall furloughed Carmen unless it is clear that an assignment of a forty-hour week is available. Also, the Carrier contends that Rule 9 of the Agreement allows it to send regularly assigned employees to outlying points as temporary transfers.

The Carrier therefore contends that Claimant was not subject to recall to perform the disputed work. The Carrier contends that the Claim is without merit and should be denied in its entirety.

The Board has reviewed all the evidence in this case, including the numerous contractual provisions that have a bearing on this dispute. It is clear that Claimant was a furloughed Carman holding seniority at Rumford. It also is clear that the work performed by Carman P. P. Perry at Riley's fell within the territory covered by the Rumford seniority point, and, therefore, if the contract required the Carrier to recall any Carman employee from furlough to perform the work involved in this case, then Claimant would have been the one.

The Carrier has claimed, however, and the Organization has presented no evidence in Rebuttal, that there has been an established past practice between the parties that the Carrier is not required to recall a furloughed Carman to perform incidental work. Moreover, the Carrier has claimed, once again without Rebuttal by the Organization, that it has been a past practice that the Carrier is not required to recall a furloughed Carman unless it is clear that an assignment of forty hours of work is available. Because the amount of time at issue is only 8 hours, and because the employee from the other seniority point was brought in to assist only briefly in the work, this Board finds that there was not any contractual or past practice requirement that the Carrier recall Claimant to perform work of such short duration. Therefore, this Board finds that work involved was temporary, incidental work and nothing in any of the cited contractual provisions required that the Carrier recall Claimant from furlough to perform it.

In so holding, this Board finds it necessary to point out that it is not unmindful of the importance of point seniority. Furthermore, this case comes to the Board accompanied by six companion cases that involved the same Claimant grieving the identical practice by the Carrier. It is noteworthy that the other six dates of the alleged wrongdoing were sufficiently close together in time, although not all in the same forty-hour week, to raise some question as to whether the Carrier is attempting to fully respect the concept of point seniority and the necessity of recalling employees furloughed from the point where the work is required rather than transferring in employees from other points.

This Board recognized the importance of the issue raised by the Organization and will not condone any Carrier attempt to circumvent the requirement of recalling furloughed employees at the proper point.

The temporary and incidental nature of the work in this case, however, consisting of different work on different cars than were involved in the companion cases, makes it evident that there is no such attempt by the Carrier here. This work is incidental and legitimately temporary. Hence, the Claim is denied.

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 26th day of March 1986.