

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
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore & Ohio Railroad Company violated the controlling Agreement, specifically, Rule 24 1/2, when on the date of May 14, 1983 they failed to call Claimant, John Wright, Butler, Pennsylvania, for service under the provisions of Rule 24 1/2, and allowed another carman to work the 3:00 p.m. to 11:00 p.m. shift at Butler under the provisions of Rule 24 1/2, subsequent to this carman working the 6:00 a.m. to 2:00 p.m. shift, as a Laborer for Carrier, which in accordance with the provisions of Rule 24 1/2, deemed this carman unavailable for work under the provisions of Rule 24 1/2.
2. That accordingly, Carrier be ordered to compensate Claimant, John Wright, for all losses arising out of this incident as follows: eight (8) hours pay at the tentative carmen's rate of pay.

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 the 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.

Claimant, Carman J. Wright, is employed by the Carrier, The Baltimore and Ohio Railroad Company, at Butler, Pennsylvania. On May 14, 1983, the Carrier utilized Carman Cypher, who is senior to the Claimant, to fill a second-shift car inspector vacancy at Butler; both Cypher and the Claimant were then on furlough and on the available list of Carmen. Carman Cypher already had filled a first-shift laborer vacancy at Butler on that same day. On May 18, 1983, the Organization filed a claim on the Claimant's behalf, charging that under Rule 24 1/2 of the Controlling Agreement, Carman Cypher was unavailable to work the second shift on May 14, 1983, and that the Claimant should have been called and utilized to fill the second-shift car inspector vacancy on that day. Rule 24 1/2 provides:

"(a) The Carrier shall have the right to use furloughed employees to perform relief work on regular positions during absence of regular occupants . . .

. . . .

"(c) Furloughed employees who have indicated their desire to participate in such relief work will be called in seniority order for this service. . .

. . . .

"(1) Employees covered by the Shop Crafts Agreement who are furloughed and make request for work under Rule 24 1/2 of the Agreement will, when used, be subject to the following:

(a) Will not be considered available for service when they will be starting a second tour of duty within the same workday. A workday as used herein shall be a 24-hour period beginning with the starting time of the first shift.

(b) Will not be considered available for service when they will be working in excess of forty (40) straight time hours within a workweek. The term workweek will begin with the starting time of the first shift on Wednesday.

(c) Will not be considered available when they have not been off duty for one shift."

The Organization contends that Carman Cypher was not available to work the second shift on May 14, 1983; the available work, therefore, should have been given to the Claimant, the most senior available Carman after Cypher. Although Cypher did work that was not covered by the Carmen's Agreement when he filled the first-shift laborer vacancy, the Carrier's use of Cypher to fill a first-shift vacancy made him unavailable to fill a second-shift vacancy on the same day, under the provisions of Rule 24 1/2.

The Organization further asserts that the Carrier used Cypher to fill the second-shift vacancy merely as a matter of convenience. The Carrier's convenience, however, does not negate the fact that Cypher made himself unavailable to fill in on the second shift on May 14, 1983, because he accepted work as a laborer on the first shift the same workday. Any theory that the employees' rights under the Controlling Agreement are segregated by craft and class is irrelevant to this dispute.

The Organization therefore contends that the Claimant was wronged when the Carrier failed to call him to fill a second-shift vacancy on May 14, 1983, in violation of Rule 24 1/2 of the Controlling Agreement. The Organization asserts that the Carrier should compensate the Claimant in the amount of eight hours' pay at the tentative Carmen's rate.

The Carrier contends that the Organization failed to prove a violation of any rule. There is no dispute regarding the use of Carman Cypher to fill the first-shift laborer vacancy. When the second-shift carman vacancy developed, Carman Cypher was the most senior carman on the Rule 24 1/2 list and was available to accept the call; the Carrier argues that it properly called Cypher to fill the second-shift vacancy.

The Carrier additionally maintains that Rule 24 1/2, as part of the Carmen's Agreement, applies only to positions covered by that Agreement, and not to positions covered by any other Agreement. Laborers and Carmen are separate crafts; laborers are not governed by the Carmen's Agreement. Rule 24 1/2's restrictions, the Carrier asserts, apply only to employees and work governed by the Carmen's Agreement. Cypher's use as a laborer did not affect his status as a Carman subject to call on May 14, 1983, under Rule 24 1/2.

Finally, the Carrier argues that there is no provision in Rule 24 1/2 that allows it to bypass the senior registered Carman in filling vacancies. The Carrier maintains that if it had bypassed Cypher, the senior registered Carman, in favor of the Claimant on May 14, 1983, then this would have been a violation of Rule 24 1/2 and opened the Carrier to a claim from Cypher as the senior registered Carman.

The Carrier therefore contends that there was no violation of Rule 24 1/2, and the claim should be dismissed or denied in its entirety.

This Board has reviewed all of the evidence in the case, and it finds that the Carrier violated the Agreement when it failed to call Claimant J. Wright for service to work the 3 P.M. to 11 P.M. shift at Butler. Hence, the Carrier is ordered to compensate the Claimant eight hours' pay at the tentative Carman rate of pay.

The language of Rule 24 1/2 is clear: employees on furlough will not be considered available for service when they will be starting a second tour of duty within the same workday. Moreover, they may not be considered available for work when they have not been off duty for at least one shift. The Carrier called Carman Cypher to perform the work in question despite the fact that he had worked the previous shift that day, 6 A.M. to 2 P.M. as a laborer. The Carrier contends that since Cypher was used on the first shift as a laborer, he retained his rights to the Carman work on the second shift. This Board disagrees.

One of the purposes of the controlling language is clear. The parties obviously drafted the contract language to ensure that when a number of employees are out on furlough, no one employee could rack up all of the intermittent work and that, along seniority lines, the work will be made available to the greatest number of laid off employees. In this case, it is clear that the Carrier is not living up to the letter and intent of the language.

The Organization is correct that it may have been more "convenient" to just offer the second-shift work to Cypher. But the contract requires more than convenience. By working the first shift, Cypher made himself unavailable for work on the second shift, even though he had the most seniority. Claimant Wright was entitled to work on that second shift and should have been called.

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Award No. 10802
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2-B&O-CM-'86

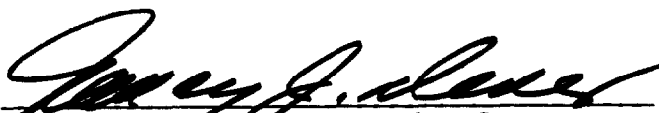
Since he was not, he is entitled to his pay.

A W A R D

Claim sustained.

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.