

The Second Division consisted of the regular members and in addition Referee Jonathan Klein 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, namely, Rules 26 A, Paragraph (a) and 28, Paragraph (c) on December 7 and December 8, 1982, by assigning Carman P. P. Perry, rostered at Lewiston, Maine, to perform Carmen's work at Rumford, Maine.

2. That accordingly, the Maine Central Railroad compensate Carman Robert M. Hodgkins (hereinafter referred to as the Claimant) for sixteen (16) hours at the Carman "C" pro rata rate of pay due to 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 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.

On December 7 and 8, 1982, the Carrier assigned Carman P. P. Perry to perform work as a member of a wreckdozer crew on a derailment at Carrier's Rumford Yard in Rumford, Maine. At the time of this assignment the Claimant was furloughed from his seniority point at Rumford.

The Organization's Claim is that the Carrier violated Rule 26A(a) and Rule 28(a) of the Controlling Agreement when it assigned Carman Perry, holding seniority at Lewiston, Maine, to perform work at Rumford, a separate and distinct seniority point. Rule 26A(a) provides:

"(a) Seniority of employees in the Mechanical Department, in each craft or sub-division 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." (Emphasis supplied).

Rule 28, captioned "Assignment of Work", states in Part (a) thereof:

"None but Mechanics or Apprentices regularly assigned or 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 maintains that Carman Perry was rostered at Lewiston, Maine, and on December 7 and 8, 1982, performed work contractually reserved to employees holding seniority at Rumford, including the Claimant. The Organization submits that as seniority is confined to the point at which each Carman is employed, all work at a given point belongs to the Carmen on the seniority roster at that point.

The Carrier presents two principal defenses to the instant Claim. First, it insists that Carman Perry was actually promoted to the position of Foreman, and acting in a supervisory capacity he controlled the rerailing duties performed by other members of the Carman craft comprising the wreck-dozer crew, but did not actually perform Carmen's work. Second, Carrier takes the position that is not required either by Rule or practice to recall a furloughed employee unless it is apparent that an assignment of a forty hour week or more is available. The Board finds upon careful review that the Carrier's latter position is determinative of this dispute for the following reasons.

To begin with, Rule 26A(a) cited by the Organization merely states that point seniority governs employees in the Mechanical Department of each craft; it provides no guidelines to measure Carrier's duty to recall a furloughed Carman with seniority at a given point when work becomes available. Whether the Board considers Rule 28(c) cited by the Organization in its statement of the Claim, or Rule 28(a) as quoted in the body of the Organization's Submission, neither paragraph of the Rule supports its interpretation of Carrier's contractual obligation to recall a Carman furloughed at a given seniority point when work of a quantity comparable to the subject Claim becomes available at that point.

The Board finds Second Division Award Nos. 10794, and the companion case, Award No. 10796 to be persuasive authority on this dispute. Each of these Awards involved the identical Claimant, Carrier, and property at issue here. In the case of Award No. 10796, even the same Carman, P. P. Perry, performed the disputed work. In Award No. 10796, the Board held as follows:

"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 Rumford 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.

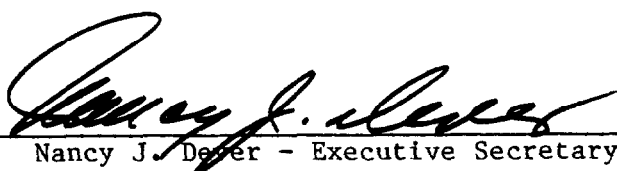
The Carrier has claimed, however, and the Organization has presented no evidence in Rebuttal, that there has been an established past practice between the parties that the Carrier is not required to recall a furloughed Carman to perform incidental work. Moreover, the Carrier has claimed, once again without 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 the 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."

This Board adopts the holding in Award No. 10796 as controlling in the instant dispute. The Board finds the work performed in this case to be of a similar temporary and incidental nature with no evidence Carrier is attempting to circumvent the concept of point seniority. The caveat contained in Second Division Award Nos. 10794-10800 with respect to the importance of point seniority is reaffirmed. A pattern of conduct or other evidence of an intent by the Carrier to subdivide work tasks in an effort to avoid the ramifications of point seniority, and the recall of furloughed employees, is not condoned by denial of the Claim in this case.

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 23rd day of July 1986.