

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

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

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad violated the controlling agreement on October 7, 1982, when they failed to call the men off the furloughed list in seniority order to work in the train yard.

2. That Carman Bobby E. Cobb be compensated for eight (8) hours pay at carman welder's straight time pro rata rate and that in the future carmen being called to work temporary be called in seniority order.

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.

B. E. Cobb, the Claimant, is a Carman assigned to the Carrier's Springfield, Missouri, facility. In October, 1982, he was on furlough status. On October 7, 1982, Car Foreman B. J. Snow began calling furloughed Carmen to fill a temporary vacancy. Carman D. Hubbard, who was junior to the Claimant, was ultimately asked to perform the work and he accepted.

The Organization asserts that Foreman Snow simply did not call the Claimant; the Carrier maintains that Snow did indeed call the Claimant, but got no answer.

In support of the Carrier's position are written statements by Foreman Snow and General Car Foreman C. R. Newton, both of whom wrote that on October 7, 1982, Snow called from the furloughed Carman list in seniority order until the temporary vacancy was filled.

The Organization's case rests chiefly upon its assertion that the Claimant was home all day, in the presence of Carman L. G. Wasson, and received no call from Foreman Snow. It asserts that since Snow did not call, the Carrier was in violation of Rule 27(b)3:

"Furloughed employees who have indicated their desire to participate in extra and relief work will be called in seniority order for this service"

There is no question that the Claimant was a furloughed employee, nor is there any doubt that he had indicated his desire to participate in extra and relief work. Thus, under Rule 27(b)3 he was indeed entitled to be called in seniority order.

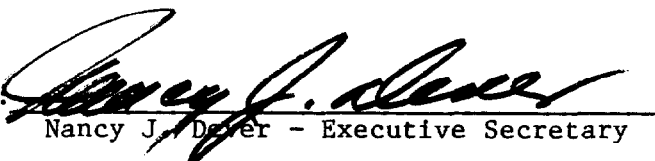
Unfortunately, we cannot determine from the record before us whether, in fact, the call from Foreman Snow to the Claimant was completed. Snow and Newton say it was; the Claimant and Carman Wasson say it was not. It is the word of two presumably honest men against the word of two presumably honest men. This Board cannot resolve such a credibility question on the basis of the record before us. Accordingly, we must rely on the locus of the burden of proof. Since the Organization raised the allegation, it bears the task of proving that it is meritorious. That task has not been accomplished.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1986.