

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: (
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. Under the provisions of the current controlling Agreement, the Burlington Northern Railway Company (formerly Fort Worth & Denver Railway Company) violated the provisions of Agreement Rule #15A (c).

2. That the Burlington Northern Railway Company (Fort Worth & Denver Railway Company) compensate Childress, Texas, Carman Clark Rogers III, eight (8) days' pay, eight (8) hours each day, at the then Carmen's regular rate of pay for the dates of May 9, 10, 11, 14, 15, 16, 17 and 18, 1984.

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 herein was furloughed from the Carrier's Childress, Texas facility as part of a general force reduction on April 22, 1983. At the time that the alleged Rule violation arose in May, 1984, Claimant and all other Carmen employed at Childress were furloughed.

On May 9, 1984, two Carmen from Fort Worth and two from Amarillo were dispatched to Childress to work on cars damaged in a derailment that occurred on March 15, 1984. The work continued on May 10, 11, 14, 15, 16, 17, and 18, 1984. The Carrier maintains point seniority, not district or regional

seniority; Amarillo and Forth Worth are seniority points distinct from the Childress seniority point. Though no Carmen were working at Childress on these dates, there is a seniority roster of Carmen who maintain seniority at Childress. The Organization filed a Claim on the Claimant's behalf, contending that Claimant was available for work on the dates at issue and should have been assigned to perform the disputed work. The Organization is seeking compensation for Claimant of eight days' pay at the Carmen's regular rate.

The Organization contends that when the Carrier assigned Carmen from two other seniority points to perform work at Childress, the Carrier overlooked Rule 15A(c) of the Controlling Agreement, which provides:

"Seniority rights of Employees are confined to the point where employed and to the seniority class or crafts in which employed."

The Organization asserts that under this Rule, Carmen furloughed from Childress are entitled to perform Carmen's work within Childress yard limits if and when they are available. Claimant was available to perform work on the dates in question. The Organization additionally argues that this Board previously has held that point seniority is not conditioned on the Carrier's maintaining a Car Department at the particular point. Moreover, because Amarillo and Fort Worth are distinct seniority points, Carmen maintaining seniority at Childress were entitled to perform the work available there, under Rule 15A(c).

The Organization points out that although the Carrier denies violating Rule 15A(c), the Carrier has not presented any argument or explanation in support of its position; Carrier instead has presented arguments based only on procedure. The Organization asserts that any procedural matters arose because during the handling of this Claim, the Fort Worth & Denver Railway Co. was acquired by the Burlington Northern Railway Co. During this period, the Carrier changed both its personnel responsible for handling such Claims and its lines of appeal; the Organization asserts that it was informed by telephone that B. J. Mason, then Carrier's Director of Labor Relations, would handle the Claim. The Organization points out that it accordingly directed the Claim to Mason, and Mason responded on the Carrier's behalf, rejecting the Claim without mentioning a procedural problem. Carrier did not raise a procedural objection until later, after it transferred the Claim from Mason to H.H. Payne. The Organization asserts that it has cooperated with the Carrier while the Carrier has tried to re-establish its procedures after the transition. The Organization argues that it delayed requesting a conference on the Claim only to allow Carrier time to resolve its personnel changes. The Organization argues that even if it did direct the Claim to the wrong Carrier Officer or at the wrong time, the Carrier waived its right to object because it subsequently handled the Claim on the property without raising a procedural objection. The Organization therefore asserts that the Claim should be sustained.

The Carrier argues that this Claim should be disallowed because the

Organization failed to comply with the time limits included in Rule 30(a), which provides in part:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."

At the time this Claim arose, the Organization was required to file Claims initially with the Regional Mechanical Officer in Denver, then with the Director of Labor Relations in Fort Worth on the second level of handling. The Carrier argues that the Organization bypassed the first level of handling when it initiated this Claim by filing it with the Director of Labor Relations.

The Carrier further asserts that under the Railway Labor Act, all reasonable efforts must be made to settle disputes on the property. The Carrier also points out that under the Board's procedural Rules, the Board shall not consider a petition that has not been handled in accordance with the Act's provisions; the Act mandates that disputes must be handled in the unusual manner up to and including the highest Carrier Officer designated to handle disputes. The Carrier argues that the Organization never refuted that the Claim was sent to the wrong level, nor did the Organization assert that it did not know the proper procedures. Moreover, the Carrier asserts that a time limit issue may be raised at any time during the handling of a Claim on the property; the Carrier argues that it did not waive its right to this procedural objection by not raising it when the Carrier initially denied the Claim.

The Carrier next asserts that no Rule, Agreement, or practice supports the Organization's Claim that a furloughed employee was entitled to perform the disputed work. The Carrier asserts that Rule 15A(c) does not give Claimant the right to perform Carmen's work at Childress while he is furloughed. This Rule does not apply as broadly as the Organization suggests; it merely establishes class and craft seniority and how seniority rosters will be maintained. The Carrier contends that it is not required to recall laid off Carmen whenever work is to be performed at the point where they formerly were employed; this situation was not a restoration of force.

The Carrier further argues that Carmen with point seniority at Fort Worth and Amarillo were correctly utilized at Childress under Rule 88, which provides:

"When necessary to repair cars on the road or away from the shops, carman, and helper when necessary, will be sent to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar nature."

The Carrier points out that this Board previously has held that under this and similar Rules, Carmen may be utilized to perform temporary work at another seniority point, and that such action is not a restoration of force requiring the recall of furloughed employees. Moreover, the Carrier contends that the road work Rules expand a Carman's seniority beyond home point under certain circumstances; Rules in the current Agreement governing emergency road service, temporary vacancies away from home point, transfers, assignment of work, and wrecking crews all support the Carrier's assertion that it may temporarily assign Carmen to perform work at outlying points where there is not sufficient work to justify employing a Carman on a regular basis. The Carrier argues that if it had recalled Claimant to perform the disputed work, then one of the Carmen from either Amarillo or Fort Worth would have filed a right to work Claim.

The Carrier additionally argues that the Organization has failed to support its Claim by showing that in this situation, the Carrier is obligated to recall a furloughed employee and that a furloughed employee would be obligated to respond. Because of his furlough, Claimant is required to be available only for restoration of the force to regular assignments; the disputed work was temporary extra work. The Carrier asserts that if it were required to recall furloughed employees to perform temporary work, then the furloughed employees would be required to respond, even if such work were available only once or twice each month; this would be detrimental to the employees because it would prevent them from keeping other permanent employment while on furlough. The Carrier further argues that there is no past practice that supports this Claim. The Carrier therefore contends that the Claim should be denied.

This Board has reviewed the procedural contentions made by the Carrier, and we hereby reject them. This Board finds that the Claim is properly before this Board for a decision on the merits.

With respect to the substantive Claim, this Board finds that the work in question was due to a derailment; and the amount of work that was performed was minimal. Hence, the Rules do not require that the Carrier recall furloughed Carmen for the sporadic and temporary extra work. The Carrier acted fully within its rights when it called Carmen from other points for the minimal amount of work necessary in repairing the cars and correcting the problems due to the derailment. Hence, the Claim must be denied.

A W A R D

Claim denied.

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Award No. 11083
Docket No. 11051
2-BN-CM-'86

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois this 3rd day of December 1986.

