

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(International Brotherhood of Firemen and Oilers
Parties to Dispute: (
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation violated the Controlling Agreement when they furloughed Laborer C. L. Hamilton on March 7, 1981 and Laborers L. G. Eskridge and Wiley Johnson on April 1, 1981.

2. That accordingly, the National Railroad Passenger Corporation be ordered to provide protection as provided for under Rule 12 of the Controlling Agreement.

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.

Claimants were assigned as Laborers at Carrier's St. Louis, Missouri Diesel facility and were primarily responsible for fueling locomotives. In March and April of 1981, Claimants were furloughed without application of Appendix C-2 protective benefits. As a result of these unprotected furloughs, Organization filed a Claim alleging that Carrier's action was a violation of Rule 12 of the Controlling Agreement which reads as follows:

"RULE 12

TRANSFER OF WORK-ABANDONMENT OF FACILITIES:

(a) The protective benefits of Appendix C-2 of the Rail Passenger Service Act, as amended, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in operations:

According to Carrier, "topping off" was discontinued at St. Louis because, in 1978, Carrier began introducing more fuel efficient locomotives (F-40's) with a larger fuel capacity (1800 gallons) than those which had been used previously (E-8's with a capacity of 1200 gallons of fuel). Thus, Carrier argues that these factors "... combined to reduce the risk of running out of fuel between fueling stations ... (and) ... (A)ccordingly, the practice of filling the engines at St. Louis was discontinued." As a consequence of these developments, Carrier attributes Claimants' resultant furloughs to a discontinuance of work (which is not protected by Rule 12), rather than a transfer of work (which is protected by said Rule).

In addition, Carrier also argues that after repeated requests on Carrier's part, Organization failed to document or identify the sites where the disputed fueling work was allegedly transferred, thereby failing to sustain its burden of proof.

Organization counters Carrier's contentions by arguing that Carrier's equipment cannot function without fueling whether the process begins with a locomotive's empty tank or is merely "topping off" as Carrier argues. Accordingly, Organization asserts that regardless of how the specific process is characterized by Carrier, the transferred work is "fueling" and thus a significant portion of the Claimant's job duties.

Lastly, Organization charges that the disputed refueling work was transferred from St. Louis, Missouri to various of Carrier's facilities at Chicago, Illinois; Kansas City, Missouri; Little Rock, Arkansas; and Texarkana, Texas.

The Board has carefully read, studied and considered the complete record in this case and finds that Organization has failed to prove the occurrence of a transfer of work or any other change in working conditions at Carrier's St. Louis facility which is protected by Rule 12. Regardless of whether the task in question was fueling or merely "topping off" as Carrier argues, Organization, nonetheless, has failed to prove with a sufficient quantum of probative evidence that the disputed work, in fact, was transferred. Organization's only evidence of such a transfer was embodied in one letter between the parties wherein the General Chairman made an unsubstantiated allegation that the St. Louis fueling work is now performed in four (4) other locations. Organization's proffering in this regard is nothing more than mere speculation and does not prove a Rule 12 violation -- particularly when measured against Carrier's plausible explanation that the St. Louis fueling work was discontinued because Carrier introduced more efficient locomotives with greater fuel capacity. For these reasons, therefore, it is concluded that Organization has failed to prove the existence of a contractual violation in this matter.