

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Toledo, Peoria and Western Railroad Company

Dispute: Claim of Employees:

1. That the Toledo, Peoria and Western Railroad Company violated the current agreement dated April 1, 1973, as amended, when on February 12, 1982 it improperly assigned a junior employee to perform a relief assignment.

2. That the Toledo, Peoria and Western Railroad Company be ordered to compensate Electrician Paul E. Burk eight (8) hours pay at the straight time 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 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.

Claimant, an Electrician, who has a seniority date of July 23, 1979, was initially furloughed by Carrier on a date which is unspecified in the record. On January 26, 1982, due to an injury to the incumbent employe, Claimant was recalled to fill the Electrician's position on the 11 PM to 7 AM Third Shift, and Claimant accepted said reassignment.

On February 12, 1982, Carrier filled a First Shift (7 AM to 3 PM) relief assignment with another furloughed Electrician, H. Douglas, who has a seniority date of August 31, 1931. According to the record, Mr. Douglas was similarly assigned on February 16, 18, 19, March 2, 3, 5, 18, April 14 and 15, 1982.

On April 5, 1982, a Claim was filed alleging that Carrier's out of seniority assignment of Mr. Douglas to the preferred daylight position was a violation of Rule 24 of the applicable Agreement which, reads as follows:

"REDUCTION OF FORCES

If forces are to be reduced seniority as per Rule 28 will govern in the laying off of men and employes affected will take the rate of the job to which assigned.

Not less than five (5) working days advance notice will be given employees before positions are abolished or any reduction in forces is made.

A list of the names of employes affected will be posted on Bulletin Boards and a copy of such list will be furnished to the Local Committee and General Chairman of the Craft or Crafts affected.

In the restoration of forces, employes will be restored to service in accordance with their seniority. Failure of an employe to return to service within fifteen (15) days after date of notice unless an extension has been granted will forfeit all seniority. Employe must file his address in writing at the time laid off and any change of address within five (5) days of such change. Failure to do so will cause employe to forfeit all seniority.

Employees restored to service will not be laid off again without (5) working days advance notice.

In reduction of forces the ratio of apprentices remaining in service shall not exceed the ratio provided for in Rule 39.

The Carrier shall have the right to use furloughed employes to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employes have signified in the manner provided in paragraph 2 hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employes to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employe will be used, if the vacancy is filled,

on the last position that is to be filled. This does not supersede rules that require the filling of temporary vacancies. It is also understood that management retains the right to use the regular employe, under pertinent rules of the agreement, rather than call a furloughed employe.

Furloughed employes desiring to be considered available to perform such relief work will notify the proper officer of the carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work. A furloughed employe may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier Officer, with copy to the local chairman. If such employe should again desire to be considered available for such service notice to that effect - as outlined hereinabove must be again given in writing. Furloughed employes who would not at all times be available for such service will not be considered available for relief work under the provisions of this rule. Furloughed employes so used will not be subject to rules of the applicable collective agreements which require advance notice before reduction in force.

Furloughed employes who have indicated their desire to participate in relief work will be called in seniority order for this service.

- Note 1: In the application of this rule to employes who are represented by the organizations affiliated with the Railway Employees Department, A.F. of L. it shall not apply to extra work.
- Note 2: Employes who are on approved leave of absence will not be considered furloughed employes for purpose of this agreement.
- Note 3: Furloughed employes shall in no manner be considered to have waived their rights to a regular assignment when opportunity therefor arises."

Simply stated, the Organization argues that, as per Rule 24, Claimant should have been given the opportunity to work the preferred First Shift and the junior Electrician should have been assigned to work the less desirable Third Shift.

Carrier, on the other hand, argues that Rule 24 applies only to furloughed employees, and thus does not apply to Claimant who was fully employed throughout the disputed assignment herein. Carrier also argues that Claimant was unavailable to work the February 12, 1982 daylight shift (7 AM to 3 PM) because he had worked the immediately preceding night shift (11 PM to 7 AM). Moreover, according to Carrier, since Claimant was still filling a vacancy at the time of the availability of the disputed Relief assignment, then Claimant was unavailable for reassignment.

Lastly, Carrier contends that even if Claimant was improperly denied the disputed assignment, he did not suffer any economic harm because he was continuously employed prior to and after the Claim date.

The Board has carefully read, studied and considered the complete record in this case and is persuaded that Carrier's position, as presented, is correct and, therefore, must be sustained. Of paramount significance in this determination is Claimant's admission that he was not a furloughed employee at the time of the occurrence of the contested assignment. In this regard, a plain reading of Rule 24 leads to the inescapable conclusion that the Rule speaks to "furloughs" and "furloughed employees." Consequently, Rule 24 was not violated when Carrier assigned the daylight Relief vacancy to the furloughed, junior Electrician Douglas, rather than to Claimant who was continuously employed at the time of the Claim.

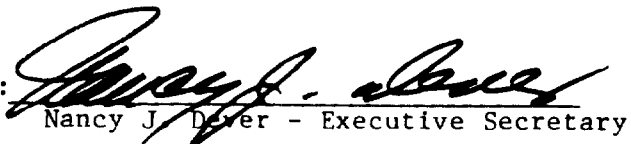
Despite his own admission that he was not furloughed and, therefore, outside of the application of Rule 24, the Organization, nonetheless, argues that, as the senior Electrician, Claimant was entitled to the preferred assignment. While a reading of Rule 16 - Bulletining New Jobs and Vacancies of the parties' applicable Agreement might arguably support the Organization's position, such a contention was not presented when the Claim was initially presented to Carrier on the property. Moreover, even if the Organization had successfully pled the alternate theory, as per Rule 16, Claimant was employed for eight (8) hours on the Claim date and thus did not suffer any damage which is compensable within the remedial power of this Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.