

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood Railway Carmen/Division of TCU  
(CSX Transportation, Inc.  
(The Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, specifically Rule 28, when on the date of March 16, 1987, the Carrier ordered carmen from another seniority point to perform the work previously performed by Claimant. The Claimant has been monetarily and contractually deprived under the provisions of the controlling agreement between the Brotherhood of Railway Carmen of the United States and Canada and the Baltimore and Ohio Railroad Company.

2. That accordingly, Carrier be ordered to compensate the Claimant for all monetary losses suffered as a result of such violation, such losses to the extent of eight (8) hours pay at the Carmen's straight time rate, on account of Carrier's violation of Rule 28 of the controlling Agreement, as amended, on the date of March 16, 1987.

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.

In the instant record, Claimant was furloughed and held seniority at Punxsutawney, Pennsylvania. There is no dispute that on March 16, 1987, Carman Roff, whose seniority was at East Salamanca, New York, (another seniority point) was ordered to assist a Punxsutawney Carman at AJ Yard in Clarion Junction in rerailing a tank car, ACFX 77623. Inasmuch as the furloughed Claimant was not recalled to assist at Clarion Junction the Organization filed a Claim in his behalf.

The Organization argues that the Carrier's assignment of the East Salamanca Carman was a violation of Rule 28 of the Agreement. In challenging the Carrier's action, it argues that the governing Rule reserves the work at Clarion Junction to the seniority of Punxsutawney Carmen. Accordingly, the Claimant was deprived of work that was reserved under the Agreement.

The Carrier argues that the amount of work was approximately one (1) hour, that the assignment of the East Salamanca Carman did not violate the Agreement, and that said work was not assigned by Rule to the Punxsutawney Carmen. As stated in its referenced letter of September 11, 1987:

"Rule 28 of the Agreement specifies that the DuBois (Point 13) and Clarion Junction (Point 14) rosters were consolidated effective January 31, 1968; that the Bradford, PA (Point 15) and East Salamanca (Point 16) rosters were consolidated effective February 1, 1967 and that Punxsutawney (Point 12) stands alone as a seniority point. Further, Rule 28 specifies that seniority is confined to the point employed. Therefore, employees at Punxsutawney hold no rights to work at Clarion Junction and the use of Carman Roff did not violate any Agreement rule."

The Carrier's position in this matter is that it may use employees on duty, rather than recalling furloughed employees. It argues that it may use employees from either or both Punxsutawney and East Salamanca. It further argues that the Claimant is improper in that there are five (5) senior furloughed Carmen.

The Board finds from the record that the Carrier has not violated the Agreement for the following reasons. First, ex parte arguments are not properly before us. The signed May 11, 1978 Memorandum, including Section 5 effective May 15, 1978, which consolidates seniority Points 12 (Punxsutawney) and 13 (DuBois), was not referenced or a matter of discussion on the property as a part of Rule 28. Assuming arguendo, the May 11, 1978 Memorandum had been joined on the property and was properly before this Board (which it is not), it does not grant Punxsutawney Carmen rights to work at Clarion Junction. The Agreement with Memorandum consolidates DuBois (13) and Clarion Junction (14) as one seniority point, and Bradford (15) and East Salamanca (16) as another seniority point, leaving Punxsutawney as a third seniority point (12). The Memorandum contains no language which provides seniority rights of Punxsutawney Carmen to work at Clarion Junction, only that DuBois Carmen are placed on the seniority roster for Punxsutawney.


There is a lack of proof that the governing Rule reserves the work at Clarion Junction to the seniority of Punxsutawney Carmen. There is no probative evidence and contractual language on point with the instant circumstances. We also note that the Organization does not dispute Carrier's argument that it "retains the right to utilize employees already on duty" rather than recalling furloughed employees, that the time spent rerailing was about one hour, or that the Claimant was improper as he would not have been recalled in any case. For all these reasons the Claim is denied (Second Division Awards 11325, 11324, 11085, 10938, 10800).

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 16th day of May 1990.