Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12031
SECOND DIVISION Docket No. 11631
91-2-88-2-140

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement the Carrier violated Rule 20 when they improperly assigned junior Carmen to assignments in the Fabrication Shop, Coster Shop, Knoxville, Tennessee.

2. That accordingly, the Carrier be ordered to pay Carmen D. T. Johnson and G. A. Booker seventeen (17) days' pay each.

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.

The Carrier maintains a heavy repair facility known as Coster Shop at Knoxville, Tennessee. One portion of that facility is the Fabrication Shop, where car parts are custom fabricated. Carmen positions in the Fabrication Shop have been considered "preferred" positions at Knoxville.

As of December 30, 1986, the Carrier abolished two carmen positions with hours of 7:00 A.M. to 3:30 P.M. in the Fabrication Shop. Just over a month later, on February 6, 1987, two additional carmen positions were abolished. Claimants were displaced when the first two positions were abolished in December. Like the two additional carmen displaced later in February, Claimants exercised their seniority to claim other preferred positions at Coster Shop.

According to the Carrier, by the end of February 1987, the Fabrication Shop at Coster was effectively reduced to a facility for small, non-repetitive jobs; the major fabricating work was moved to a facility in Roanoke, Virginia. However, the Carrier still needed to use the Coster Fabrication Shop occasionally, such as when fabricated parts could not be obtained from Roanoke. On such occasions, if additional carmen were needed to do such work, the Carrier assigned carmen from the Coster Shop General Forces without bulletining the assignments or treating them as vacancies to be posted in accordance with the Agreement. This Claim, filed March 22, 1987, after a series of correspondence between the Organization's Local Chairman and the Coster Shop Manager, objects to the Carrier's method of selecting carmen to perform the occasional fabrication work at Coster.

The Organization argues that the Carrier has violated Rule 20 of the Agreement by abolishing the carmen positions in the Fabrication Shop and then assigning other carmen to perform work like that which the displaced carmen previously did. Rule 20, in pertinent part, provides as follows:

> "(a) New positions and permanent vacancies in the respective crafts shall, except as provided in Rule 16, be bulletined previous to or within ten (10) days following the dates such vacancies occur for a period of five (5) days.
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> * * *
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> (c) Bulletined positions may be filled temporarily pending assignments.
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> (d) Assignments to such new positions or vacancies shall be made within twenty (20) days from the date of bulletin and bulletin shall be posted announcing the name of the employee assigned.
>
> * * *"

It is plain that Rule 20 cannot be violated except where a new position is created or a permanent vacancy exists. In this case, the Carrier insists that it neither created new positions nor filled permanent vacancies to replace the abolished carmen positions at the Coster Fabrication Shop.

On the property the Organization also cited Rule 21, governing the filling of temporary vacancies resulting from an employee's sickness or other leave of absence; Rule 22, dealing with the filling of vacancies arising from an employee's long-term disability; and Rule 27, involving the use of furloughed employees to perform temporary relief work. However, each of those Rules also presupposes a vacancy which the Carrier needs or wants to fill.

Therefore, the pivotal question in this Claim is whether the Carrier experienced "vacancies" for carmen in the Coster Fabrication Shop after the carmen positions there had been abolished in December 1986 and February 1987. There cannot have been a violation of the cited Rules unless the need for carmen's work which undisputedly arose there created "vacancies" within the meaning of those Rules.

As the Carrier pointed out in its response to the Claim on the property, it has long been established between the parties that, notwithstanding the provisions of Rule 20, the Carriers who are signatory to the Agreement "continue to have the right to reassign temporary employees temporarily to perform other work of their craft." This proposition was established in a letter from the Carrier dated May 8, 1975, shortly after the Agreement became effective.

In this case, the Carrier abolished positions in the Fabrication Shop at Coster when major fabrication work was removed from that facility and transferred to Roanoke. There is no evidence that the abolishment of those positions was a pretext or a subterfuge. The Carrier maintains General Forces carmen at Coster for the very purpose of providing flexibility and efficiency in meeting special temporary needs within that facility. The understanding between the parties which is quoted above, which has been in force almost as long as the Agreement itself and for more than ten years at the time of this Claim, permits the Carrier to temporarily reassign employees as it deems appropriate in such circumstances as long as the reassignment is to other work of the craft. In other words, the Carrier need not create a new position or declare a vacancy merely because it momentarily needs additional work performed by carmen in a particular area of the Coster Shops.

In connection with this Claim on the property, the Organization noted that, after the Local Chairman first protested the Shop Manager's selections of carmen to perform temporary work in the Fabrication Shop, the Manager invited the Local Chairman to submit a list of employees from which such selections could be made, but thereafter rejected and ignored the list. However, the correspondence on the property reveals that the Shop Manager expected to receive a list of General Forces carmen who desired temporary assignments in the Fabrication Shop. The list forwarded by the Local Chairman contained the names of the Claimants and the other two carmen affected when the positions were abolished in the Fabrication Shop. The Shop Manager explained that he rejected that list because those displaced employees had in turn displaced into other "preferred" positions and were not General Forces carmen. Thus, the Shop Manager's actions preceding the Claim were neither unreasonable nor inconsistent with the Carrier's position here.

Because the Carrier has the right to abolish positions when declining work makes them expendable, and also has the right to temporarily reassign employees to other work of the craft when such work is needed, the Carrier's actions in this case did not constitute a violation of the Agreement unless the Carrier is shown to have abused its rights or discretion. The Organization has made no such showing in this case. The Claim, therefore, must be denied.

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 1st day of May 1991.