

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12637
Docket No. 12361
94-2-91-2-157

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated the provisions of Rule 27½ of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman R. Hieneman (hereinafter 'claimant') when on December 28, 29 and 30, 1987 the carrier worked a junior employe in violation of the aforementioned Rule.
2. That, accordingly, the claimant is entitled to be compensated for eight (8) hours each day listed above that a junior employe was worked at the applicable Carmen's rate for said violation."

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 employe 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 events giving rise took place at Carriers' Raceland Car Shop in Russell, Kentucky.

Claimant worked November 30, through December 4, 1987, as a Burner-Welder. On December 4, 1987, Claimant was furloughed. On December 28, 29 and 30, 1987, Carrier worked a junior employee as a Burner-Welder. The Organization maintains that in so doing, Carrier violated Rule 27 1/2 of the Agreement, which provides;

"Rule 27-1/2--(Effective November 1, 1954). (a) The carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph (b) hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee.

(b) Furloughed employees desiring to be considered available to perform such extra and 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 employee 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 employee should again desire to be considered available for such service notice to that effect--as outlined hereinabove--must again be given in writing.

Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule. Furloughed employees so used will not be subject to rules which require advance notice before reduction of force.

(c) Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the

extra list in seniority order and used in accordance with the rules of the agreement.

UNDERSTANDING (1)--(Effective September 15, 1958)

(2) Positions which are filled hereunder will be filled on a day-to-day basis."

In its defense, Carrier argues that Claimant was contacted during his furlough period in order to be considered for work, but refused the work. In addition to the fact that there is no substantiation for that argument on the record, Claimant denies that he was contacted and further asserts that he had already filed a proper request for work on November 23, 1987. Carrier raised additional arguments for the first time in its Submission to this Board, but because they were not developed during the handling of this dispute on the property as required, they have not been considered. That being the case, we find that Carrier violated the Agreement when it called an employee junior to the Claimant on the claim dates in question. Claimant is allowed three days pay at the pro rata, straight-time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.