Award No. 5351

Docket No. CL-5297

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE NEW YORK CENTRAL RAILROAD COMPANY (Line West)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated our Memorandum of Understanding dated September 8th, 1943:

1. When they permitted Mr. Edward L. Sullivan, who no longer had employment relations with the Carrier, to perform extra service in the Reservation Bureau at La Salle Street Station at Chicago, Illinois, while regular furloughed employes were available; and

2. That the Carrier be required to remove Mr. Edward L. Sullivan's name from the Reservation Bureau's seniority roster; and

3. That Miss Sally Stibrany, who was available for this extra work, be paid a days' pay for each day she was kept out of service from June 20th, 1949 to August 31st, 1949, while Mr. Edward L. Sullivan was employed at intervals during this time.

EMPLOYES' STATEMENT OF FACTS: Under date of September 8th, 1943, the Carrier and the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes entered into a Memorandum of Understanding with respect to the application of Rules 14 and 19 of the Clerks' General Agreement, the second paragraph of said Memorandum reading as follows:

> "Furloughed employes, either Class 1 or Class 2, who do not file their residence address, in writing, with the employing officer **at the time furloughed**, or who do not renew their residence address (whether or not it has been changed) within each subsequent ninety (90) day period while on furlough, forfeit all seniority. Addresses to be filed in duplicate—employing officer to send one copy to the Local Chairman of the Brotherhood of Railway Clerks."

With the close of business on June 20th, 1949, eighteen (18) positions were abolished and the Carrier issued notice to that effect to sixteen (16) employes under date of June 15th, 1949 but failed to serve the same notice to Mr. Edward L. Sullivan and Miss Dorothy B. Cowie, whose positions were also abolished but whom the Carrier retained for extra relief work (see EXHIBIT NO. 1 attached hereto).

dence address filed by her, hence she retains her employment re-ration unimpaired." (Emphasis added.)

It will be noted that Mr. McCollum stated: "I have a copy of the residence address filed by her." However, he did not claim that it was ever filed in writing with the **employing officer,** nor did he state how he obtained a copy of the address "filed by her". He is obviously favoring her and seeking to penalize Mr. Sullivan.

Mr. Hutton replied to Mr. McCollum on August 3, 1949 (copy of Mr. Hutton's letter attached hereto as Carrier's Exhibit 5) and questioned how Mr. McCollum obtained a copy of Miss Cowie's address which he alleges was "filed by her" when it was never filed with the "Employing Officer" in writing, and no copy was apparently ever sent to the Local Chairman either.

Mr. McCollum never replied to Mr. Hutton's letter of August 3, 1949 but, instead, appealed the claim of Miss Stibrany to Mr. Nerland, the next highest officer designated by the Carrier to hear such appeals.

From the foregoing evidence and facts it is plain that Mr. Sullivan and Miss Cowie were in the same category and held the same status as extra employes. It is the Carrier's position that both these employes retained their seniority, and in the event this Division should sustain Item 2, of this claim, a development that is really beyond our conception, the award would automatically apply to Miss Cowie in the same manner as Mr. Sullivan. The Carrier cannot be a party to any discrimination in such a case.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about June 15, 1949, one Sullivan and a group of other employes were regularly assigned holders of certain positions at the location herein involved. On said above date all of said employes were duly advised by Respondent that effective June 20, 1949, the several positions would no longer exist and, except for said Sullivan who would be transferred to the extra board, such employes would be placed in a furlough status.

Petitioner avers "there was no regular position for Mr. Sullivan to displace at the time his position was abolished"; that said Sullivan occupied a similar status to that of the other employes and inasmuch as he did not proceed in the manner set out in the terms and provisions of that certain Memorandum of Understanding of September 8, 1943, any work performed by said employe was prejudicial to the right of an employe who had abided by said Memorandum to protect said work in that said Sullivan by his acts surrendered his seniority.

The above and foregoing requires that we examine Rules 14, 19 and the Memorandum in order to determine whether or not the acts of Carrier constituted a violation of the Schedule. The Memorandum in no way or manner conflicts with either of the above rules and they in turn are not in conflict with each other. The purpose and effect is to define what must be done by one in a furlough status before he can exercise those rights he is entitled to by virtue of his seniority. Assuming but not deciding Rule 19 has application only to regular established positions and Petitioner's averment no regular position existed to which Sullivan might displace to be true we find nothing in the Schedule prohibiting Carrier from proceeding in accordance with Rule 14. Sullivan, by virtue of seniority, was entitled to protect the extra work and did not thereby injure or prejudice the furloughed employes. That portion of the Memorandum which refers to employes whose positions are abolished makes reference only to Rule 19 and is silent concerning Rule 14. When facts develop, as they have in the instant case, and which bring into operation Rule 14, it would be but a play on words for this Board to find Carrier should have first furloughed the employe concerned before it could proceed as set out in the last above mentioned rule.

The remaining point to consider is the effect to be given to the statement in the seniority roster issued by Carrier that the involved employe was furloughed on June 21, 1949. If what is said in the roster is to be conclusively presumed to be correct the employe involved herein had no right to protect the work as against the Petitioner. We think the roster created no more than a rebuttable presumption which must yield to the rule of when facts appear presumptions disappear. In the instant case the facts contradict the statement in the roster. Seniority is a valuable right and one which may not be subjected to the vagaries and caprice of a scrivener.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Schedule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of April, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 5351

Docket No. CL-5297

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: The New York Central Railroad Company (Line West).

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Two (2) questions have been raised by the petitioning party in this request for interpretation of Award No. 5351. Reference is here made to each of said questions as contained in Petitioner's letter dated June 11, 1951.

The first of said questions appears to be outside of the matter presented to the Board. It was determined employe Sullivan had not been furloughed.

The second of said questions poses a hypothetical situation not before the Board and we deem it inordinate.

Referee Angus Munro who sat with the Division, as a member, when Award No. 5351 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.