

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when Track Department employees (Section Gang T-44) from the Pennsylvania Division were used to perform track work on the Susquehanna Division on January 25, 26, 27 and 30, 1984 (Carrier's Files 9.84, 10.84, 11.84, 12.84).

(2) Because of the aforesaid violation, furloughed Trackman W. Hurley, E. Jones, E. Knapp and M. Gardner shall each be allowed twenty-three (23) hours of pay at the trackman's straight time rate and furloughed Trackmen V. Miner, III and T. Clapper shall each be allowed seventeen (17) hours of pay at the trackman's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

At the time of this claim the Claimants held seniority as Trackmen on the Carrier's Susquehanna Sub-Division. They were on furlough. In January, 1984, there was a derailment at the Carrier's East Binghamton Yard in Conklin, New York. There is no dispute that this yard is within the Susquehanna Sub-Division. The Carrier used regularly assigned Trackmen from the Pennsylvania Sub-Division to repair track damage in Binghamton Yard on the days of January 25-27 and 30, 1984. A claim was subsequently filed with the Carrier by the Organization on the grounds that the Carrier should have used the furloughed Claimants, rather than the regularly assigned Trackmen from the Pennsylvania Sub-Division, to have done the repair work after the derailment.

The Rules at bar in this case are the following:

"Rule 3

(a) Seniority rights of employes, except as provided in (b) and (c), are confined to the sub-department and class in which employed and to the sub-division on which they are located as herein defined.

Track Department:
Pennsylvania Sub-division
Susquehanna Sub-division
Saratoga Sub-division
Champlain Sub-division

Bridge and Building Department:
Pennsylvania Sub-division
Susquehanna Sub-division
Saratoga Sub-division
Champlain Sub-division

(b) Seniority rights of trackmen and laborers will be restricted to their respective gangs, except that, when forces are reduced, they may exercise displacement on their seniority sub-division.

(c) Seniority rights of steel bridge men and equipment operators as such, shall extend over the entire system.

Rule 42(1)

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."

The Organization argues that the Carrier inappropriately transferred work from one seniority district to another when it used the regularly assigned employees from the Pennsylvania Sub-Division to do the work at bar. In denying the claim the Carrier argues that its right to have used the employees it did was protected by Rule 42(1) cited above under title of "...extra work." According to the Carrier, this Rule gives it options to go to either regularly assigned employees of another seniority district, or to furloughed employees in the district in which "extra work" is found.

The Agreement Rules and factual particulars of this claim parallel those of Third Division Award 28065 already heard and ruled on by this Board. The only differences are the dates in question when the violations took place, and the remedy requested by the Organization. The six (6) Claimants to this case were also party, among others, to the claim considered under Third Division Award 28065.

Conclusions arrived at and rationale presented in Third Division Award 28065 hold here by reference thereto. The claim is sustained on the merits.

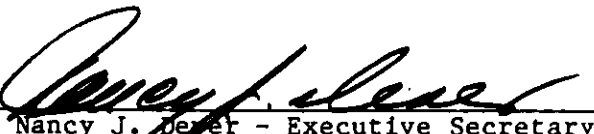
Relief to be paid by the Carrier shall be twenty-three (23) hours at the pro rata rate to Claimants W. Hurley, E. Jones, E. Knapp and M. Gardner, and seventeen (17) hours at the pro rata rate to Claimants V. Miner, III and T. Clapper.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.