

Award No. 16830

Docket No. MW-17630

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it used two equipment Repairmen from the Memphis Motor Car Shop to perform work at the Vicksburg Motor Car Shop on January 20, 21, 24, 25, 26, 27 and 28, 1966, instead of Equipment Repairmen R. H. Johnson and T. Bishop. (System Case No. 418/Mi-54-T-66.)

(2) Equipment Repairmen R. H. Johnson and T. Bishop each be allowed 56 hours' pay at their pro rata rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The living quarters provided for some of the Carrier's employees consist of the body of a camping trailer (identical to camping trailers used by hunters, fishermen and vacationers), with the exception that the company trailer used by the Carrier is purchased without wheels, axles, etc., and is placed on a chassis equipped with flanged wheels by the Carrier's Equipment Repairmen so that it can be attached as a trailer to certain on-track work equipment.

In this case, the Carrier purchased a Layton camping trailer to provide living quarters for the operator of a BDC-9 discing machine. The work of placing the camping trailer body on the chassis equipped with flanged wheels, and of providing a hitch by which same could be coupled to the discing machine as well as other work related thereto was performed at the Vicksburg Motor Car Shop on the Mississippi seniority district. The aforescribed work was assigned to and performed by four Vicksburg Motor Car Shop repairmen and two repairmen from the Memphis Motor Car Shop.

The claimants, whose seniority is confined to the Mississippi seniority district, are regularly assigned equipment repairmen at the Vicksburg Motor Car Shop and were willing and fully qualified to have performed this work had they been given an opportunity to do so.

Meanwhile, on January 20, 21, 24, 25, 26, 27 and 28, 1966, the dates that this work was being performed at Vicksburg, Messrs. R. T. Johnson and T. Bishop, who also hold seniority at the Vicksburg Motor Shop, were assigned, at their request, to work on rail laying machinery and machines in tie replacement outside the Vicksburg Shop. On the dates in question they were working at McNair, Mississippi, a distance of approximately 46 miles from Vicksburg, Mounds, Louisiana, a distance of approximately 12 miles from Vicksburg and Rayville, Louisiana, a distance of about 50 miles from Vicksburg. During the period with which this claim is concerned none of the men working on the tool car at Memphis, including the supervisors Messrs. Trayser and Hardy, worked any overtime hours. However, Repairmen Johnson and Bishop both earned 12 hours' overtime during that period. Copies of all pertinent correspondence are attached as Exhibits A - I.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that Carrier violated Rule 2, Rule 4(a) and Rule 16(a) of the Agreement, when it assigned and permitted two equipment repairmen from a foreign seniority district (Memphis Motor Car Shop) to perform work at Vicksburg Motor Car Shop (Mississippi Division).

Carrier contends that: (1) There is a conflict in facts submitted by the parties and this Board is without authority to resolve disputes in fact; (2) That the Memphis Motor Car Shop Workers were sent to Vicksburg to supervise work that Vicksburg employees were unfamiliar with and therefore not qualified to perform; (3) That it has been a long standing practice of this Carrier to act in this manner; and (4) That even if there had been a violation of the Agreement, this Board is without authority to sustain a monetary claim.

Rule 16(a) of the Agreement is as follows:

"Employees will not be temporarily transferred by management from one seniority district to another except when necessary because of flood, fire, storm, hurricane, pressing necessity, or when agreed to between management and General Chairman. Employees thus transferred will retain seniority rights on the district from which transferred."

The above quoted Rule 16(a) is clear and free from ambiguity; therefore, it is not subject to more than one interpretation. It contains specified exceptions to the provisions prohibiting the transfer of employees from one seniority district to another, and this Board is without authority to infer or imply further exceptions. See Awards 2009, 5464, 13863 and 15467 of this Division.

There is sufficient probative evidence in the record to make a prima facie case for the Claimants. Carrier's Exhibit B admits that two employees who had no seniority on the Mississippi Division performed work on the dates in question on the Mississippi Division (Vicksburg Motor Shop). The letter signed by three employees of the Vicksburg Shop dated June 1, 1967 states that the two foreign employees "performed the same work as men in shop during regular working hours"; the letter from employee B. J. Smith states that the two men from Memphis "did as much work or more" than the Vicksburg force. These admissions and letters were included in the correspondence on the property and in the submission of the Organization. Although this evidence

does not reach the height of being irrebuttable, the fact is apparent, nothing contained in the record does rebut the prima facie case of the Organization. It is true that Carrier does assert that the Memphis men only **assisted and supervised**, but it fails to produce any satisfactory evidence showing that these men failed to perform work belonging to these Claimants. It would have been a simple matter to obtain affidavits from the two foreign employes setting out in detail, just what they actually did in Vicksburg. This Board will not speculate on evidence not supported by the record.

There is a complete absence of proof in the record that any of the exceptions set out in Rule 16(a) existed. Carrier evidently did not even attempt to gain the Organization's consent, absent the other exceptions. It, therefore, violated the Agreement.

There is also an absence of proof that an emergency existed requiring the involved work to be finished by a certain date that could not have been performed by employes on the Mississippi Division. Therefore, this Board holds that Claimants could have arranged their work assignments to have performed this work, or could have performed this work on overtime. In absence of proof to the contrary, the work involved in this dispute belonged to the Claimants and was wrongfully taken from them. Even though they were fully employed at the time this work was performed, there is no proof they could not have performed this work at other times. Therefore, they are entitled to the monetary claim. See Awards 16338, 16335, 15874, 16520, 14004, and 14982 by this referee.

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

That the parties waived oral hearing;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.