

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Grand Trunk Western Railroad Company (The Detroit,
Toledo and Ironton Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned and used Trackman J. Cross instead of Trackman-Truck Driver R. L. Shoemaker to fill a vacation vacancy of trackman-truck driver on Section 11 at St. Paris, Ohio on September 18, 19, 20 and 21, 1984 (Carrier's File 8365-1-184).

(2) Furloughed Trackman-Truck Driver R. L. Shoemaker shall be allowed thirty-two (32) hours of pay at the trackman-truck driver's straight time rate and one and one-half (1 1/2) hours of pay at the trackman-truck driver's time and one-half 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 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.

It is the Organization's position that Carrier violated the controlling Agreement, particularly Rule 8(a) and (d) and Rule 43(a) when Carrier assigned on a temporary basis a trackman to perform 32 hours of trackman-truck driver work at the straight time rate and one and one-half hours work at the time and one-half overtime rate. The trackman performed the work to fill a vacation vacancy of a trackman-truck driver on Section 11 at St. Paris, Ohio on September 18, 19, 20 and 21, 1984. The Organization asserted during the handling of this case on the property that Claimant, who holds seniority as a trackmantruck driver and who was on furlough status at the time, should have been called for this work since Carrier was effectively precluded from using employees who did not hold seniority in the Trackman-Truck Driver Group pursuant to the seniority provisions of the Agreement set forth in Rule 8.

Carrier argues that it had the right to utilize employees already in service rather than to recall furloughed employees. Relying on Rule 26, which states, "An employee may be temporarily or intermittently assigned to different classes of work within range of his ability," Carrier argues that it properly used an on-duty trackman for the temporary service in question. Moreover, Carrier notes that under Rule 4(d), Management can, in its discretion, use a furloughed employee in order of seniority on temporary positions, but there is no requirement that it must do so. Thus, Carrier argues that it was permissible to temporarily upgrade the trackman since, by corollary, it was not required that Claimant be recalled from furlough status.

In our review of this case, we concur at the outset with Carrier's contention that the Organization has advanced certain arguments relating to Claimant's status which are at variance with the position taken by the Organization during the handling of this dispute on the property. It is a basic tenet of the Railway Labor Act that the Board is unable to consider argument or evidence not included on the property. (Third Division Award 27328). Therefore, we will restrict our consideration of this case to the issues which were advanced prior to submission of the matter before the Board.

So stating, we find the controlling principles set forth in a series of prior Awards of this Board are dispositive of the matter at hand. In Third Division Awards 28047, 28048, 28050, 28051, 28052, 28053, 28054 and 28056, the Board concluded in a line of similar cases that Carrier is not required to use furloughed employees for short term vacancies such as that in dispute here. As in those Awards, we note that the Employees have not cited any rule obligating Carrier to follow the principles of seniority in filling temporary vacancies of less than thirty days. Carrier can, if it desires, per Rule 4(d), fill temporary vacancies from the furloughed list but it has not obligated itself to do so. Absent any specific rule support for the Organization's theory, we must rule to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.