

PUBLIC LAW BOARD NO. 1838

Award No. 31

Carrier File MW-CH-78-10

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement .

of Claim: 1. Carrier violated the effective Working Agreement Rule 15-C when it failed to recall furloughed section employee John L. Burch, Jr. to perform extra work needed on section at Circleville, Ohio. Based on findings of CH-78-10, cases listed below will rest with decision of Neutral: MW-WI-77-1; MW-CH-78-12; MW-RO-78-6; MW-CH-78-9; and MW-SP-78-28.

2. Claimant Burch be paid at his applicable straight time rate for all straight time, overtime and/or double time made by other section crews not assigned to Claimant's territory, April 22, 1978 through April 25, 1978. Total time - 32 hours straight time rate, 29 hours overtime rate, and 5 hours double time rate.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

A train derailment, occurring at Circleville, Ohio, on Carrier's Scioto Division, on April 22, 1978, gave rise to the instant claim which is also a pilot claim for five (5) other identified cases. Section crews were brought in from Columbus, Chillicothe, Sandusky and Portsmouth to assist the Circleville Section in repairing the damaged track.

The following claim was filed by the General Chairman on May 25, 1978:

"We have been advised by the above Claimant, who is furloughed from Circleville Section, that a derailment occurred on his Section April 22, 1978, and that his section, as well as employees from Columbus, Chillicothe, Sandusky, and Portsmouth were used to perform work, while he remained furloughed.

Sandusky section performed work on his section from 12:00 AM to 9:00 PM, Saturday, April 22, 1978; also from 9:00 AM to 8:00 PM, Sunday, April 23, 1978. Also, other sections mentioned performed work on these days.

Portsmouth section performed work from 7:00 PM to 4:00 PM each date Monday, April 24, 1978, and Tuesday, April 25, 1978.

In view of the above, consider this as a claim for the Claimant to be paid for all work performed beginning April 22, 1978, at his applicable straight time rate of pay for all straight time, overtime and/or double time that these sections are working on his section while he is furloughed. This claim is to be considered as a running claim so long as the violations of this nature are permitted to exist. Also, we will not tolerate mixing of sections.

We are citing Rule 15(c) as well as any other rule of the current M/W Agreement which might pertain thereto in support of this claim."

Carrier's highest officer, ultimately, in pertinent part, replied:

"Initially we find your presentation of this claim to be vague and lacking sufficient information to enable carrier to determine either the nature of the alleged violations of which you complain or the specific agreement provisions upon which you wish to rely in establishing Claimant's entitlement to either the work in question or to the additional unearned compensation requested. We are unaware of, nor have you cited, any work performed, which could remotely be interpreted as belonging to Claimant to the exclusion of all other classes or crafts of employees.

Without retreating from the above, we find that section forces have always been combined or 'doubled' without objection from your organization. This is particularly true in cases of emergency such as derailments, snow storms, etc., in order to prevent stoppage or delays to carrier's operations.

In view of the vagueness and lack of specificity in your presentation in this matter, we are unable to respond further.

Under the circumstances, we find there has been no violation of Rule 15, nor any other rule of the current working agreement and this claim is, therefore, declined."

The Employees assert that Carrier should have first called back the furloughed employees from the section at Circleville before calling in other section crews to perform the work of clearing the derailment and repairing the trackage involved.

The Employees cite Rule 5(b) (Seniority Rights, i.e., that section employees can hold seniority only in one Roadmaster's District), Rule 15(c) (Filling New Positions and Vacancies Pending Bulletining and Assignment, i.e., that senior section employees will be recalled to home section when it is desired to fill vacancies occurring on such force) and Rule 18 (Retention of Rights, i.e., Claimant's filed their names and addresses when furloughed). They also offered Award 61 of SBA 488 and Award 64 of SBA 279 as being in support of their position.

The Board finds the claim initiated herein was sufficiently factually clear to permit its handling on the merits.

Here, a train derailment occurred, on April 22, 1978, at Circleville, Ohio, resulting in track damage, blockage of and impairment to Carrier's operations, thereby creating an emergency situation. Carrier reacted thereto by augmenting the existing section at Circleville, Ohio, by combining or "doubling up" other sections therewith.

The gravamen of the dispute created thereby was whether Carrier could in the case of an emergency, as here, combine or double section forces when determined that the existing section force could not adequately handle same irrespective of the fact that there were employees in such section furloughed?

Limited to this factual situation we find in the affirmative. There was no denial that here an emergency existed at Circleville, Ohio on April 23, 1978. As noted in Third Division Award 12579 (Kane), which denied a similar claim:

"...although the furloughed men were not contacted... this fact in itself is not a conclusive violation of the agreement.

The serious nature of the derailment on the main track...coupled with the problem of contacting furloughed men over a wide area justified the conduct of Carrier."

See also Third Division Award 15846 and 17795.

No rule was introduced which required therein for Carrier to recall furloughed employees for short durations not justifying the creation of an additional position, or positions on the section involved.

Carrier's evidence demonstrating that section gangs have always been combined, irrespective of whether there are employees furloughed, has been of long standing and was acquiesced in by the employees, was not contravened.

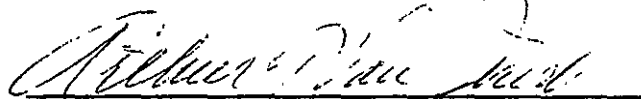
It is noted that Rule 20 - Transfer for Temporary Service - appears to recognize that which is here complained of.

In the circumstances, this claim will be denied.

Award: Claim denied.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member