

PUBLIC LAW BOARD NO. 1838

Award No. 33

Carrier File MW-RO-77-1

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

Statement

of Claim: 1. Carrier violated the effective agreement when it allowed two employees to work on Section No. 1 at Roanoke, Virginia, who were not assigned to said section during the time employees P. J. Edwards and N. C. Reedy were assigned to Section No. 1, prior to being furloughed from service, in violation of Rule 15-C.

2. That Claimant's P. J. Edwards and N. C. Reedy be paid 8 hours straight time each day, a total of twenty four (24) hours for June 20, 23, and 27, 1977.

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.

The instant claim, which is a pilot claim on behalf of the identified furloughed Section Laborers, was initiated by the General Chairman, July 25, 1977, as follows:

"We have been informed that on June 20, 1977, June 23, 1977, and June 27, 1977, George Trent and George Warrent worked full time on these days on Section #1.

We have four furloughed employees on Section 1 and are requesting that these furloughed people be paid for each of these days and that they be paid as long as this violation exists.

We are citing Rule 15-C and any other rule of our current M/W Agreement to support this claim, because when we have people furloughed from any section, no other people can come in and perform this work."

Carrier's highest officer designated to handle such claims ultimately denied such claim asserting:

"Initially, we find your presentation of this matter to be vague and lacking sufficient information to enable the Carrier to determine the exact nature of the work of which you complain or the agreement provisions upon which you wish to rely in establishing Claimant's entitlement to that work and to the additional unearned compensation requested on their behalf.

Without retreating from the above, our investigation of this matter reveals that it has always been a practice on this property to combine section forces to accomplish work requiring more than the usual number of men on one section. This practice has persisted throughout times when employees were furloughed on any particular seniority district and has never been objected to by your Organization.

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

Carrier's perception of the vague factual circumstances complained of as reflected by the claim filed appears to have some merit. Notwithstanding, the record does reflect that Carrier combined two Maintenance of Way Section gangs in order to maintain its Roanoke terminal facility. Despite the territory of each section gang being distinct, Carrier, on June 20, 23 and 27, 1977 combined Section 2 to work with Section 1.

Rule 15-C - Filling New Positions and Vacancies Pending Bulletining and Assignment - reads:


"(C) Senior section laborers furloughed from their home section force will be reached when it is desired to fill temporary vacancies occurring on such force pending bulletining and assignment under provisions of Rule 8."

We find no basis in the above quoted rule which provides for support to the claim as made. No rule was cited requiring Carrier to recall furloughed section employees for, as here, a short duration. Seniority of a section laborer is not confined to a particular gang or that gang's general territory.

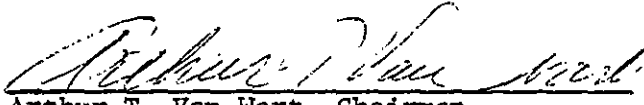
Carrier's documented evidence, as to the long standing practice of combining section forces to accomplish work which cannot be done with one gang irrespective of whether there were employees on furlough from such force, was not contraverted.

In the circumstances and limited to the facts of this case, the instant claims will be denied.

Award: Claims denied.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, September 30, 1980.