

PUBLIC LAW BOARD NO. 4567

PARTIES United Transportation Union

TO and

DISPUTE: Norfolk and Western Railway Company

STATEMENT OF CLAIM: Four (4) claims for payment for one day, each, at conductor's and brakeman's rate of pay in favor of various Norfolk Terminal yardmen account violating the Crew Consist Agreement on dates as listed:

1. Conductor P. E. Strickland and Brakeman N. Little - January 25, 1984
2. Conductor B. E. Brown and Brakeman W. J. Cannon, Jr. - January 20, 1984
3. Conductor F. E. Henderson and Brakeman J. F. Fariss - January 19, 1984
4. Brakeman C. H. Shannon - January 19, 1984

STATEMENT OF FACTS: There is no dispute that on the claim dates the named Claimants, with the exception of Claimant Shannon, were required to work their assignments without a second brakeman. Claimant Shannon was a furloughed Trainmen.

On January 19, nine vacancies existed for trainmen on the third shift. Six trainmen were available on the extra list and six trainmen were available on the emergency list to fill these vacancies. At calling time, however, four emergency trainmen were unavailable for duty when called. The second brakeman vacancy on the 12:00 Midnight Hump Assignment was offered to each brakeman contacted during the time period but they elected to not work the assignment.

On January 20, twenty vacancies existed for trainmen on the third shift. On said date trainmen were available on the extra list and six trainmen were available on the emergency list to fill these vacancies. However, at calling time, one extra trainmen and four emergency trainmen were unavailable for duty when called. The second brakeman vacancy on the 12:00 Midnight East End Assignment was offered to each trainmen called, but they elected not to work this assignment.

On January 25, twenty-eight vacancies existed for trainmen on the third shift. Thirty-five trainmen were available on the emergency list to fill these vacancies. However, at calling time, eight extra trainmen reported sick and three emergency

trainmen were unavailable for duty when called. The second brakeman vacancy on the 12:00 Midnight Portlock Run was offered to each trainmen called during the time period but they elected to not work the assignment.

FINDINGS: This Board upon the whole record and all the evidence, finds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

DECISION: The claims involve the application of the Crew Consist Agreement and its mandatory directive that the assignments in question shall be operated with one conductor and at least two brakeman. In situations where such a mandatory rule is violated the greater authoritative weight of precedential board decisions rests with the proposition that payment should be made to the proper available Claimant standing for the work in question rather than crew members working the assignment. There is one noted exception to this general rule and it was carved out under unusual circumstances -- which are not applicable here -- by Arbitrator Arthur T. Van Wart in Award No. 2 of Public Law Board No. 2333.

As noted, all the Claimants, except Brakeman Swanson, were members of the Short Crews. He was cut off the Board and on furlough. As such, he is the only proper Claimant.

The issue with respect to Brakeman Swanson is whether he was available. Based on the evidence presented to the Board, we must conclude, in view of the unique practice of recalling employees at this particular point, that the Carrier had an obligation to try to contact him for one of the vacancies of January 19. Since they did not he is entitled to be compensated as claimed.

AWARD

Claims number 1, 2, and 3 are denied. Claim Number 4 for Mr. Swanson is sustained.



Gil Vernon, Chairman
and Neutral Member



W. R. Eubanks
Employee Member



R. D. Kidwell
Carrier Member

Dated:

4-20-90

CARRIER MEMBER'S DISSENT TO AWARD NO. 1 OF PUBLIC LAW BOARD
NO. 4567


The Carrier Member dissents to that portion of the claim in favor of Brakeman C. H. Shannon dated January 19, 1984 being sustained.

This is not a case where the Carrier violated a clear and unambiguous provision of a crew consist agreement by continuing to hold an employee in a furloughed status while continuing to operate its crews with less than the required crew complement. Claimant in this case was, for all intents and purposes, furloughed by request of the Local Chairman on January 16, 1984 and recalled by the Carrier four days later on January 20, 1984.

On January 19, 1984, Carrier operated a Norfolk Terminal yard crew with a conductor and one brakeman. We made every effort to fill the vacancy with employees marked up and available in the work force. However, the extra list as well as the emergency lists were exhausted.

Under the circumstances, for the board to hold that the Carrier was required to call a furloughed employee to fill the temporary vacancy is contrary to the overwhelming precedent established by previous boards that furloughed employees have no rights to fill such vacancies.

The Carrier will not accept the decision in this case as precedent in any future cases.


R. D. Kidwell
Carrier Member

ORGANIZATION MEMBER'S SUPPORT TO AWARD NO. 1 OF PUBLIC LAW BOARD NO. 4567

The Carrier member has dissented to a portion of the claim in favor of Brakeman C. H. Shannon dated January 19, 1984 being sustained.

Circumstances reveal the Carrier violated the existing Crew Consist Agreement. In an executive session, the Carrier's member, in response to the Chairman, conceded that all attempts were not made to contact the claimant.

The Carrier, on date of claim, operated a yard crew with a conductor and one brakeman. This was also the action taken on two (2) prior days at Norfolk Terminal.

In the past, if there were furloughed employees, the Carrier would call every employee back, if necessary, to get the needed employees to fill the vacancies. This was done in order for the Carrier to avoid paying time and one-half by using employees on their off days or stepping up employees with eight (8) hours rest.

In the instant Award, it was clearly illustrated that the Carrier violated the Agreement. This Organization expects contact made to every furloughed employee, if necessary, and that the crew clerk call, and make it a part of the record, that this contact was made before operating said crew in violation of the Agreement.

This Organization has acknowledged the decision in this case as precedent in all past, present and future cases.

W. R. Eubanks

W. R. Eubanks
Organization Member