Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way Employees	)	
	)	
	)	
vs	)	**Case 32/Award 32**
	)	
Burlington Northern Santa Fe	)	

Statement of Claim

1. The Agreement was violated when the Carrier recalled Section man J. C. Cromer, instead of furloughed Section man S. A. Lox, to perform section work (snow removal and clearing of track and right of way) at Galesburg, Illinois during the period beginning January 1, 1999 through January 15, 1999.

2. As a consequence of the violations referred to in Part (1) above, Claimant S. A. Lox shall now be compensated for all straight time and overtime time hours worked by junior employee J. C. Cromer during the period beginning January 1, 1999 through January 15, 1999 at the applicable section's rate of pay.

Background

A claim was filed on February 13, 1999 by the general chairman of the Organization with the manager of maintenance support in Kansas City, Kansas on behalf of the Claimant to this case. According to this claim the Carrier called an employer junior to the Claimant to do snow removal, track and right-of-way clearing work on the dates outlined in the claim.

The Carrier's manager of maintenance support denied the claim on grounds that the road master had made attempts to contact the Claimant two different times by phone on January 2, 1999 but "...no one answered the phone...". There was an emergency

situation during the time-frame involved in this case, according to the manager, with 18 inches of snow and very high winds.

The claim could not be settled on property. It was, therefore, docketed before this Board for final and binding adjudication.

Discussion

A review of the record in this case shows the following. In the first days of January of 1999 the area of western Illinois around Galesburg had some 18 inches of snow which disrupted rail traffic. Supervision at the Carrier had to deal with the weather related problems and the road master called all available employees to help out, including those on furlough. At the time the Claimant was a district 3 section man on lay-off status. He was also called to come help with the snow emergency. According to a statement in the record by road master Gillespie at Galesburg, the Claimant "...was called twice on January 2, 1990 to return to work for emergency snow removal and in both instances no one answer the telephone...". According to this road master employees in employment status from towns such as Stronghurst, Illinois and Burlington, Iowa could not make it in to do the emergency work because of the blizzard. So he went to the list of furloughed employees, including the Claimant. The road master states that he committed to work the employees he called on from furlough to "...work them at least through January 8, 1999...".[1] As it turned out, it took a bit longer than that to get the tracks etc. cleared.

---

[1]Citations taken from Carrier Ex. 1.

A claim was filed by the Claimant on grounds that the road master called in a furloughed employee junior to the Claimant to work clearing snow and track and right-of-ways at the Galesburg, Illinois yards. According to the claim, a junior employee, whose name is J. C. Cromer, worked through January 8, 1999 for 12 hours each day, and then from January 11-15, 1999 for 8 hours each day. There is a dispute in the record with respect to exactly how much Cromer did work after being called but that is a matter dealing with remedy which the Board would revisit only in the event of a sustaining Award in this case.

The claim states that Mr. Lox was available for work and ought to have been called in accordance with the provisions of Article 9 of the labor agreement. This rule states the following, in pertinent part, which is cited here for the record.

Rule 9

> "...when new positions of more than thirty (30) calendar days' duration are established, or when vacancies of more than thirty (30) calendar days' duration occur, employees who have complied with this rule will be called back to service in order of their seniority...".

The union states that it is aware that the road master tried to call the Claimant without success, but it also states that the Claimant ought to have been called by manpower with implication that if the latter had been done, apparently, the Claimant would have answered his phone.

Argument by the Carrier is that Rule 9 does not give the Claimant seniority status over less senior employees in the instance in question because the job in question lasted

for less than 30 days. According to the Carrier working on positions such as those that materialized in the January of 1999 is only voluntary.

Findings

A review of the record in this case by the Board warrants the following conclusions. First of all, there was an emergency that was the result of an act of God. Had the blizzard not been so severe it appears that the Carrier would have handled the situation with the employees on board on overtime basis. Some of these employees were not able to make it in, however, because of the weather conditions that caused the emergency at the Carrier in the first place. So the Carrier tried to go to furloughed employees in order to bring them in, if they were available, to help out. Nothing wrong with that.

Did the Carrier have to go to these employees on furlough status in strict seniority order in accordance with the roster? Under the language of Rule 9 the technical answer to that question is in the negative since the emergency jobs were of less than 30 days' duration.

This is not a case of first impression with respect to this matter and other arbitral tribunals have come to the same conclusion vis-a-vis the language of Rule 9.

It does appear, however, that the Carrier attempted to honor the spirit of seniority rights as a general matter by first calling the Claimant, and twice at that, prior to calling the less senior person who ended up coming in and doing the work.

This Board, and the Carrier apparently also, is sensitive to the large body of arbitral precedent, some of which is cited by the union both on property and in its submission to this Board, wherein the principle of seniority is honored and upheld in industrial contexts governed by union-management contracts. There is no evidence in this case that the Carrier did not try to honor this fundamental principle applicable to all labor contracts. Irrespective of whether the Carrier was contractually obliged to do so or not stricto dicto its officers did, which is not in dispute in this case, attempt to contact the Claimant prior to contacting the junior employee.

Argument by the union that manpower rather than the road master ought to have called the Claimant is not supported by any contract language to which the Board has been apprised. Even if that had been done arguendo there is no evidence, but only an assumption, that the Claimant would have answered his phone.

In view of the full record before it in this case the Board has no alternative but to deny the claim. It will rule accordingly.

Award

The claim is denied.

Edward L. Suntrup, Neutral Member

William A. Osborn

Thomas M. Rohling, Carrier Member

Roy C. Robinson

Roy C. Robinson, Employee Member

Date: 10/31/06