

PUBLIC LAW BOARD NO. 1838

Award No. 30

Carrier File MW-WI-78-2

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: 1. Carrier violated Rule 15C of the effective Working Agreement, when it furloughed section men from Williamson Section No. 4 in December, 1977, and allowed Extra Gang Men with no section seniority to perform work normally assigned as section men's work and did not recall furloughed section men.

2. Claimant Blackburn and other section men be paid eight (8) straight time hours each day, and all overtime and Holiday pay that was received by Extra Gang Men, during the period section men were furloughed, which was December, 1977, January, February, and March, 1978.

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 claim herein represents a pilot claim covering similar claims in nine identified other claims.

Claimant is a Section Labor-Section 4, (Williamson Yard) who was furloughed December 30, 1974. He alleges that Extra Gang D-1 "worked his job." The following letter dated January 24, 1978 was presented by the General Chairman:

"We have been advised by the above claimant that he was furloughed from Section No. 4, Williamson Yard, and that Extra Gang D-1 is being used on his home section to perform work.

According to the information we have been furnished, Extra Gang D-1, with Harmen Daniels as Foreman is working on his home section, eight hours each day, performing work, and the claimant was furloughed on December 30, 1977.

Therefore, in view of the above, we are requesting that beginning with January 3, 1978, that he be paid eight hours each date, at his applicable section laborer's rate of pay each day that this Extra Gang D-1 works on his section; and, that this be considered as a running claim so long as this violation is permitted to exist.

We are citing Rules 5(c) and 15, as well as any other rules of the current M/W Agreement, which might pertain thereto in support of this request."

Said letter was not changed up to and including the highest carrier officer designated to handle such claim, who under date of June 15, 1978, replied, in part, as follows:

"Your claim is initially declined because you have not identified the type of work allegedly performed by Extra Gang D-1 that is reserved exclusively to Mr. Blackburn. The rules you rely upon, 5(c) and 15, certainly do not support your contention\*\*\* In that no evidence whatsoever has been produced as to the work complained of nor the date or dates of such alleged occurrences, the presentation on behalf of Mr. Blackburn does not contain the necessary essentials of the claim, much less a continuing claim, and is, therefore, declined."

Rule 5 - Seniority Rights - (c) - reads:

"Seniority rights of employees will be restricted to seniority established in a Grade or Grades on any seniority roster or rosters, and, except as provided for in Section (b) of Rule 13 they will have the right to exercise their preference to positions to which their seniority entitles them when forces are reduced, positions abolished, vacancies occur, new positions are created, and, as provided for in Rule 19."

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

"(c) Senior section laborers furloughed from their home section force will be recalled when it is desired to fill temporary vacancies occurring on such force not requiring bulletining and when it is desired to fill vacancies or new positions occurring on such force pending bulletining and assignment under provisions of Rule 8."

The threshold issue for the Board to pass upon is the handling of the matter on the property.

Carrier has contended from the very outset, that the claim as presented and handled on the property was vague, indefinite and hence, defective.


Here, the record reflects that the work allegedly performed by Extra Gang D-1, apparently was first spelled out in general terms, in the submission presented to this Board. While such might otherwise provide a basis for support of the Employees position if same were not previously handled on the property it cannot be handled before this Board. As pointed out by Third Division Awards 13741 and 20131 (Dorsey):

"It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms; and (2) a party claiming a violation had the burden of proof.

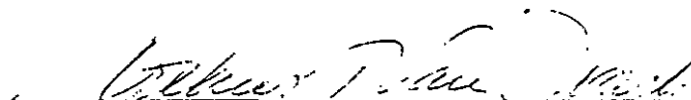
When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule that supports the alleged violation, the movant in the perfection of its case on the property, is put to supply its specifics. It is too late to supply the specifics, for the first time, in the submission to this board - this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the claim."

Award: Claim dismissed without prejudice to the positions of the parties.

  
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.