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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6614
Docket No. 6480
2-L&N-CM-'74

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the furlough of Carmen Helpers J. D. Roberts, C. C. Johnson, and G. D. Whiting effective March 1, 1972, without notice, was in violation of the current agreement, and

2. Accordingly, the Louisville and Nashville Railroad should be ordered to additionally compensate them for five (5) days each (40 hours) at the pro rata rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants went on vacation on February 21, 1972, in accordance with the vacation schedule which had been posted on or about January 1, 1972. The vacations ended on March 3rd, and March 4th and 5th were rest days for all three claimants. On February 24, 1972 a notice was posted on the bulletin board furloughing a number of employes, including claimants, effective March 1, 1972. When claimants reported for work on March 6th they were advised for the first time that they had been furloughed effective March 1st.

Petitioner contends that Claimants were not given the five working days advance notice of furlough provided in the rules, and hence should receive five days compensation. Rule 26 (b) provides:

> "If force is reduced, 5 working days advance notice will be given the men affected by bulletin before the reduction is made. Notices will indicate seniority dates, names and classification of employes affected with copy to the local chairman."

Petitioner argues that the history of the earlier agreements lends support to the thesis that it was the intent of the parties that an employee would be given an advance notice of five working days or more before he would be furloughed. It is argued further that Carrier knew full well that the Claimants were on vacation but made no effort to notify them. Petitioner states that it has no knowledge of any similar occurrence over the thirty years that this provision has been in the Agreement. Carrier argues, however, that for the past forty years furlough notices have always been bulletined and that this is the established practice. There is no evidence of any prior analagous circumstances and their handling.

The Organization cites Awards 4395 and 5513 in support of its position. We note that in both of those Awards the rule specifies that four days notice will be given before a force reduction, but in neither case is the method of notice given; in the instant case the notice is to be by bulletin. However in those Awards, as well as in our Award 3690, we indicated that the purpose of the notice was to inform the employe and that the purpose of the notice should be functional not merely technical.

Carrier cites Award 2274 which states:

> "We think the rule contemplates the seventy-two hour notice may be posted at any time and will be effective as to all employes affected thereby whether they are, at the time, either off or on duty."

Even though it is not specified by Petitioner, we assume that the type of notification required by their position would be some type of mailed notice to the Claimants homes. Such type of notification is provided for in Rule 26 (g) dealing with recall notice. Contemplation of such a notification procedure raised as many questions as it answers; possibility of employes on vacation being away and not receiving their mail is but one of many such questions. Further, when a furlough involves a number of employes, as it frequently does, serious damage to seniority rights are possible when notice may be determinative of furlough dates. Further we are not impressed with Petitioner's argument that the language of Rule 26 (b) may be construed to mean written notice to individuals affected.

We are certain that the parties intended that effective notice to employes be accomplished by bulletined notices. It is also probable that the parties did not contemplate the circumstance of an employe being on vacation when a furlough notice was to be posted. It would be highly desirable for such an event to be provided for by modification of Rule 26 (b); we have neither the power nor wisdom to make such changes in the Agreement - that must be accomplished by the parties at the bargaining table. (See Awards 19961, 19239 and 18604).

For the reasons cited above and the fact that clear language of the Rule in question has not been violated, the claim must be denied.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of January, 1974.