

Award No. 190

Docket No. 177

2-CRI&P-FT-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That the force reduction of some 130 men in all departments in the Silvis back shops, at Silvis, Illinois, on November 18, 1936, without the required forty-eight (48) hours' notice was in strict violation of Rule 26, paragraph 4 of the current agreement.

That all employes involved in said reduction as shown by list and listed as Exhibit A be compensated for a full day's pay account of this reduction.

**STATEMENT OF FACTS:** A bulletin was posted on all bulletin boards at Silvis on October 29, 1936, which reads as follows:

"Silvis shops will operate 12 days in November, from November 2nd to 7th and November 9th to 14th inclusive. Forces will be laid off after November 14th and such forces will be retained as are necessary to carry on shop order and emergency work. Car department will continue as at present."

On November 14th the men in each department that were involved in the force reduction had been given 48 hours' notice pursuant to Rule 26 of the agreement. Those that were given no notice reported for work the following Monday, which was November 16. On Tuesday, November 17, the carrier notified certain men to stay home the following day or Wednesday, November 18, and to report back to work on Thursday morning, November 19. One hundred thirty men are involved and a day's pay is claimed for each.

**POSITION OF EMPLOYEES:** The employes contend that Rule 26 was violated, the pertinent portion of which reads as follows:

"Twenty-four (24) hours' notice will be given before hours are reduced. If force is to be reduced, forty-eight (48) hours' notice will be given men before reduction is made."

The employes contend that the bulletin above quoted and which was posted on the bulletin boards in the different departments in the Silvis back shops and car department on October 29, 1936, had served its intent and purpose and, therefore, was null and void after its effective date of Novem-

the foremen advised certain men before going off duty Tuesday that an additional amount of money had been secured and the shops would be worked on Thursday.

The additional money with which the shop was operated after the 14th of November developed after the bulletin was placed the first of the month. A certain amount of money is allotted each month to the various departments on the railroad. With the additional money developing at Silvis after the 14th of November, the carrier's officers at that point felt that they were doing the employes in the shop a favor by giving them all the work they possibly could in the month of November.

The action of the officers at Silvis in this instance was purely in the interest of the men, and was for the purpose of furnishing the men with all the work they possibly could give them.

The local officers were following the usual practice of giving advice by the bulletin notice of the time shops will work and then desired to provide work for as many men as possible in addition to such full working time, but if penalties are to be applied the men will, in some cases at least, lose the privilege of having the additional work and earnings.

It is hereby affirmed that all data herein contained is known to the employes' representative and is hereby made a part of this dispute.

**OPINION OF THE DIVISION:** In our opinion the carrier was guilty of a clear violation of Rule 26.

The argument of the carrier with regard to the method of accounting and distributing of certain appropriations for the operation of shops and other departments, while ingenious, is not entirely borne out by the record, and moreover is not relevant in this case. Rule 26 is clear and requires 48 hours' notice. The men retained in the service after the expiration date of reduction in the bulletin of November 14, 1936, were not given such notice but were merely given verbal notice a short time before the close of the shop day on November 17, 1936.

We cannot find that there has been a practice to depart from this rule assented to by the employes. Violation over a period of time does not change a rule nor suspend its application. The only method by which this can be done is by negotiation and subsequent change of the pertinent and applicable agreement. We cannot over-emphasize the desirability of complete compliance with the rules. Compliance here places no onerous burden on the carrier.

We have not overlooked the fact that no objection was raised by the employes to the alleged violation in this case until 11 days following such violation. Rule 35 provides that a complete report should be made to the proper authorities within ten (10) days.

We do not believe that the technical violation of Rule 35 is sufficient to deprive this Board of jurisdiction in this case. Where a procedural rule such as this one has been technically violated, whether or not the National Railroad Adjustment Board should take jurisdiction should depend upon whether the alleged violation has been prejudicial to the rights of either side. Moreover, the question of jurisdiction in a matter of this kind is one lying solely within the discretion and power of this Board. We do not believe that the violation herein in any way prejudiced the rights of the carrier.

The claim of the employes must be sustained.

**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.

The parties to said dispute were given due notice of hearing thereon.

The carrier violated its agreement with System Federation No. 6 in not giving the required 48 hours' notice to the men in the Silvis back shops on November 18, 1936, in accordance with the requirements of Rule 26.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.