Award No. 479
Docket No. 449
2-SP-CM-'40

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES: That Messrs. J. D. Plater, R. W. Barber, J. L. Clement, W. J. Black and Sam Petroff, carmen, and E. E. Lashmett and H. I. Tovas, helpers, be compensated for five (5) days each because of violation of Rule 29 (d).

EMPLOYES' STATEMENT OF FACTS: On June 10, 1938, the above named employes were laid off without being given the five (5) days' notice as provided for in Rule 29 (d):

> "Except as provided in Rule 20, five (5) days' notice will be given all employes who are to be laid off and lists furnished the Committee. * * *"

POSITION OF EMPLOYES: Rule 29 (d) provides that all employes will be given five (5) days' notice before being laid off except as provided for in Rule 20, which reads in part:

> "Temporary vacancies in positions of regular employes, will be filled by furloughed employes of the same class (if available and qualified), in accordance with their seniority. Such employes filling temporary vacancies, may be laid off without five (5) days' notice, when such vacancy terminates by return of regular employe. * * *" (Underscoring ours.)

It is our position that Rule 20 has no application in the case of an employe who is assigned to increase the regular force.

In the case above referred to, the company assigned the seven (7) employes to work, which was an increase to the regular force and they were not filling the places of regular employes and under Rule 29 (d) could not be laid off without the five (5) days' notice.

If the position of the company should be sustained they could call any number of employes to work for twenty-nine days, lay them off on the thirtieth day and call them back again for twenty-nine days; by using this method there never would be any regular jobs and the employes could have no assurance of regular employment.

The carrier requests the Board to deny the claim.

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.

These findings and opinions apply to the following dockets:

Docket No. 387	Award No. 477
Docket No. 436	Award No. 478
Docket No. 449	Award No. 479

Although the facts differ and the rules to some extent, the material question involved is common to each of the cases. That question is whether when the management calls in furloughed men to perform some particular piece of work it is required to give them the notice applicable to reduction in forces.

In Docket 387, reduction in force is covered by Maine Central agreement Rule 19, which provides for 72 hours' notice. In Docket 436, Rock Island agreement Rule 26, covering the same subject, 48 hours' notice is required. In Docket 449, Southern Pacific agreement Rule 29 (d), 5 days' notice is required with certain exceptions.

In each instance the furloughed men were called for a particular piece of work denominated emergency work. The schedules make no distinction with respect to emergencies nor are they limited to any definite length of time of the service to be required to bring them within the application of the rule covering restoration of forces. The restoration of force rule provides in substance that when it becomes necessary to increase forces, furloughed men will be called in the order of their seniority.

The exception referred to in the Southern Pacific agreement is that the notice requirement will not be applicable to employes filling vacancies of regularly assigned men. Such facts are not involved in any of these cases.

It appears that when the furloughed men involved in these cases were recalled for the work here involved, for the brief periods involved, and whatever the emergencies, in the absence of special agreement, the notice requirement became applicable to them.

The question has been before the Board in various forms previously. In Awards 20 and 21 the Division interpreting a New York Central rule held counter to this contention. The award, however, was definitely limited to the particular cases involved. The question was again up in the cases covered by Awards 190, 252, 363, 372 and 451. Particular circumstances were involved in each of these cases. None of them, therefore, can be said to be squarely controlling on the point.

There is no authority in the schedule which authorizes the re-call of furloughed men and treating them as though they were extra men called for a particular piece of work. The carrier is, of course, under no compulsion to re-call furloughed men; it can use the regular men although perhaps at the cost of overtime. To sustain the carriers' positions would be in substance to hold that it can treat furloughed men as though they were an extra list callable at straight time, thus avoiding payment of overtime to regular forces and at the same time excepting the application of the notice rule so far as they are concerned.

We conclude that the rules involved require the notices asserted and the claims will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1940.