

Award No. 561

Docket No. 566

2-CI&L-MA-'41

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: That O. P. Smith, machinist at Bloomington, Indiana, was called in to work on April 10, 11, 12 and 27 in place of machinists who had laid off for some reason or another for one or two days and when the regular machinist returned to work the company did lay Mr. Smith off without giving him five (5) days' notice; also other employees from the several crafts comprising System Federation No. 32 were called in and laid off again under the same conditions; all of which is in violation of our General Rule 26 of our current agreement and also Section 6 of the Railway Labor Act. And that O. P. Smith should be paid for five (5) days' pay for each time he was called in to work and laid off again without given five (5) days' notice.

POSITION OF EMPLOYEES: The agreement in effect on the Chicago, Indianapolis & Louisville Railway with System Federation No. 32 has been in effect since July 1, 1926, with General Rule 26 as part of said agreement, and not only has this rule been in this agreement but has been in every agreement on this road since Federal Control and the National Agreement. That the five day notice provision has been carried out in every respect until about September, 1939.

That on or about this time the officials of this company called or caused to be called in several employees for less than five days and laid them off without five days' notice in violation of Rule 26 of our current agreement.

Rule 26 reads:

"When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per rule 30 to govern; the men affected to take the rate of the job to which they are assigned.

Five days' notice will be given men affected before reduction is made, and list will be furnished local committee.

The transfer of employees will be made at the end of the twenty-four hour period in which the bulletin terminates.

When it becomes necessary to reduce the force at any point or in any department or subdivision thereof account of breakdown in ma-

The carrier submits:

1. There has been no violation of Rule 26 of the current agreement.
2. There has been no violation of Section 6 of the Railway Labor Act.
3. Rule 20 of the current agreement has no bearing on the case.
4. O. P. Smith, and others, were used to work in the place and stead of regular employes who laid off, and the carrier was not obliged to give them five days' notice.
5. An award should be rendered in favor of the carrier.

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.

This Division has had many cases involving furloughed men called to fill assignments of one or more days' duration and then laid off without giving them notice required by the rules of agreements pertaining to reduction of forces. In all of the cases where the furloughed men were worked in addition to the regularly assigned men this Division, generally, has held the agreements required notice.

This case, however, involves the employment of a furloughed man called to fill the place of a regularly assigned man who laid off.

The force, in the instant case, was not increased or reduced and, therefore, it was not necessary under these circumstances, to give the employe involved in this case five (5) days' notice before he could be laid off.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1941.