# Award No. 1262
# Docket No. 1183
# 2-AJT-MA-'48

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 110, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

## ATLANTA JOINT TERMINALS

**DISPUTE: CLAIM OF EMPLOYES:** 1. That when furloughed Machinist Helper Charlie Fitch was restored to service on the 3 P. M. shift August 12, 1947, he was subject to the terms of the current agreement.

2. That accordingly the Atlanta Joint Terminals be ordered to additionally compensate this employe at overtime rates for having been changed from one shift to another on August 13, and for each eight hour shift lost thereafter at the applicable rates beginning with 3 P. M. on August 13, 1947, until restored to service, or until the expiration of proper notice provided for in the current agreement.

**EMPLOYES' STATEMENT OF FACTS:** Machinist Helper Charlie Fitch was regularly employed as such on the 3 P. M. to 11 P. M. shift by the Atlanta Joint Terminals, hereinafter referred to as the carrier, until he was involved in a force reduction effective August 7, 1947.

The carrier made the election to fill vacancy of a machinist helper on the 3 P. M. to 11 P. M. shift, and thereupon Claimant Fitch was restored to service on that shift effective August 12, 1947.

The carrier also made the election to fill vacancy of a machinist helper on the 7 A. M. to 3 P. M. shift, and thereupon assigned Claimant Fitch to fill that vacancy, effective August 13, 1947, but at the close of that shift the carrier discontinued the service of Claimant Fitch without proper notice.

Claimant Fitch contended that he was entitled to overtime rates for having been changed from the 3 P. M. shift to the 7 A. M. shift on August 13, 1947, plus reimbursement for the shifts he believed he was entitled to work thereafter, which was ruled upon unsatisfactorily by Mechanical Foreman S. D. Griffin on August 20, 1947, as shown in copies of two letters submitted herewith as Exhibits A and B.

The carrier contends that its right to recall and again lay off furloughed employes without proper notice is upheld by Awards 558, 561, 837 and 1023, which is affirmed by copies of the director of personnel's letters dated August 27, 1947, and December 27, 1947, submitted herewith as Exhibits C and D.

Further, such consideration is entirely out of keeping with reason, equity and the spirit of the Rule.

With respect to both questions the carrier states that the current rules are a part of an agreement entered into on August 12, 1944, and the practice followed in this case is identical with that of every other such case occurring since the date of the agreement. Employes have never before questioned this application of the rules and it is the established practice which, itself, demonstrates the intent of the parties to the agreement.

Further, the position of the carrier and its interpretation of these rules, and the established practice under the rules, is in strict accord with principles laid down in your Awards 558, 561 and 837.

The carrier, therefore, feels the employes' claim is entirely without merit and respectfully requests that it be declined.

**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 facts disclose that in each instance when claimant, a furloughed man, was called and used he filled a vacancy of one day caused by a regularly assigned employe laying off. Such use did not actually increase the force.

In the former rules of the parties agreement, effective December 1, 1937, the four day notice was only contained within provision (1) of Rule 11, which provision related to the reduction of forces. However, in Awards 558, 561 and 837 of this Division, wherein like provisions in similar rules were involved only in other agreements, we construed the rule so that the notice required applied to furloughed employes that, in the restoration of forces, had been restored to service within the meaning of the rule. By the addition of provision (d) to Rule 18 of the current agreement, effective August 15, 1944, this provision, that is, the four days' notice, was expressly made applicable to employes restored to service in the restoration of forces. This additional provision to Rule 18, which was Rule 11 of the parties' previous agreement, added nothing new to the rule. It expressly made applicable the four days' notice to employes restored to service in the restoration of forces. That is what we had previously held in the construction of similar rules in other agreements. Consequently, our former construction of the rule as to when employes have been restored to service in the restoration of forces so that the notice is required is applicable.

This construction is stated in Award 837 as follows: "On the issue of what constitutes force reduction and the relation of notice thereto, this Division, in Awards 558 and 561, soundly distinguished between those cases in which furloughed men were worked in addition to the regularly assigned employes, and hence were entitled to notice upon being laid off because there had been increases and subsequent reductions of force, and those cases in which the furloughed men were worked in place of regularly assigned employes who were temporarily absent, and hence were not entitled to notice upon termination of the vacancies because there had been neither increases nor reductions of force."

And more directly stated in Award 639 of this Division as follows: "There is no increase or reduction of forces involved here but rather a situation where a furloughed man was called to perform the work of a regularly assigned employe who was absent. It was not necessary to give the notice claimed to be mandatory by the employes."

Before the provisions of Rule 10 are applicable to furloughed employes they must be restored to service and assigned to a shift from which they are changed. Under the facts herein it has no application as claimant had not been restored to service.

For the reasons stated the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th, day of July, 1948.

**Dissent to Awards Nos. 1262, 1263 and 1264.**

The undersigned dissent from the above majority decision of the Second Division of the National Railroad Adjustment Board in Awards Nos. 1262, 1263 and 1264.

The vital point involved in these awards is, when or under what conditions or circumstances is a furloughed employe "restored to service"?

There are two separate and distinct actions or procedures covered in the rules here involved that cannot be separated and treated as single items standing alone; they are so closely interrelated with other rules that to do so upsets the entire rules structure.

The two actions or procedures are, separating forces (men) from service and restoring forces (men) to service. The first action comes on the separation or removal from service—the rules provide that separation or removal can be made, where it can be made and the method of making it. There are no exceptions or options. The second action, the one here involved, comes on restoration or returning of men to service—the rules provide that men will be restored or returned, the basis upon which they will be restored or returned and to what position they will return. There are no options and only one exception, which is, "if available within a reasonable time."

An individual having an employe relationship under the terms of the agreement has all the rights applicable, unless expressly exempted or prevented by specific terms contained in the agreement.

The decisions in these three awards cause men in the service of a carrier to be denied their contract rights contained in many rules in the agreement—it denies them specific rights contained in the specific rule here involved—it sets up a group of certain men as a group separate and apart from all others, who are specifically denied many contractual rights. There are no provisions in the agreement, either by direct statement, by exception, by option or by inference to justify the decisions made.

In our brief in these cases we said in part:

> "There are two separate and distinct questions involved in these dockets—one, involving furloughing men from and restoration to service and two, transfer time. We will deal with each question separately.
>
> Reduction in force and restoration to service rules, insofar as the basic provisions are concerned, are, for all practical purposes, the same on most all railroads. There are minor differences, but those minor differences are not here involved.

These basic provisions have been in agreements for many years, even prior to the National Agreement of 1919. The carriers in 1921, when all the rules of the National Agreement were open before the United States Railroad Labor Board, argued for many changes in the furloughing men from and restoration to service rules. (National Agreement Rule 27.) The United States Railroad Labor Board, however, made no changes in the basic provisions of the former rule when they issued their rule in Addendum No. 6 to Decision 222.

After the 1922 shopmen's strike many so-called company unions came into existence. Agreements were written containing rule provisions not theretofore contained in agreements negotiated by bona fide labor organizations. Among other things there came into existence so-called 'stand-by' or 'extra' forces. These forces were composed of men who were first hired or employed and then, at the will of the carrier, were laid off or furloughed and advised that if and when any work was available they would be called in. What actually happened was that men in this group even waited at the shop gates for a call to work. A man under these circumstances didn't have a job—he only had an aggravation; under these circumstances there was no stability of employment; no sense of security. It enabled the carrier to reduce the so-called regular force to a minimum need or even below, knowing full well that their work requirements were safeguarded by these readily available workmen.

The standard furloughing men from and restoration to service rules were designed to prevent these situations mentioned above and did prevent them until they came back into existence under company union conditions. Some roads, having standard rules, recognized this advantage to them of doing the same thing, which was an unfair advantage, and attempted to do it.

The first cases of that nature came to this Division in 1935, the violation complained of occurred in 1931. They came from the New York Central; they were deadlocked and decided with the assistance of Referee Devaney; they were our Dockets Nos. 12 and 13, Awards Nos. 20 and 21. In deciding these two cases Devaney said, 'This calls for a construction of the meaning of certain language used in the rule. The language is cumbersome. The intention of the parties could have been made clear by the use of a few simple words.'

The decision supported the position of the carrier but was not to be an interpretation or serve as a precedent.

* * *

Following the decisions of Referee Devaney in Awards Nos. 20 and 21, and acting on the suggestion of Referee Devaney that 'the intention of the parties could have been made clear by the use of a few simple words,' the shop craft employes decided to attempt to clarify that point when agreements were open for changes.

These cases are the first ones that have come to this Division under an agreement containing the added paragraph to the furloughing men from and restoration to service rule. It is paragraph (d) of Rule 18 in effect on this railroad—it reads, 'Employes restored to service will not be laid off again without the four days' advance notice provided in this rule.'

Therefore, these men who were restored to service and again taken out of service without having been given four days' notice are entitled to four days' pay in lieu of said notice in each instance where such improper furlough took place.

* * *"

As stated in the above there is an added paragraph, Rule 18 (d), not contained in any agreement involved in prior cases, on this point, the added language has great significance in the light of the historical record—it should not have been so lightly cast aside.

That part of the decisions dealing with the transfer time dispute clearly demonstrates that these men are set apart as a separate group, working for the carrier just like their fellow workmen, but who are denied the same rights and benefits of the agreement provisions as their fellow workmen would have enjoyed if involved in the same kind of case.

Machinist Helpers Willie Ross, having been employed on eighteen (18) days from November 20 to December 27, 1947, and Virgil Bailey having been employed on twenty-two (22) days from November 24 to December 16, 1947, surely cannot be said to not be employes subject to the same rules that apply to any other employes beside whom they work.

These decisions do not and cannot be supported by any language contained in the agreement. As these decisions stand, it opens the way for the distortion of many provisions of agreement simply because it sets apart a group of men who are denied the same rights as other men beside whom they work. These decisions will permit of acts that will enable them to evade certain provisions of the agreement and to an extent far beyond just those elements here involved.

It is a well recognized doctrine of contract construction that if a certain interpretation of the language of a contract will produce absurd results, then that interpretation should be abandoned in favor of one which does not produce such results.

H. J. Carr
A. C. Bowen
T. E. Losey
George Wright
R. W. Blake