

Award No. 1287

Docket No. 1204

2-ACL-FT-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Federated Trades)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1.—That there is no authority in the current agreement for the removal of Reclamation Plant Helper C. A. Hutson from service at the close of his assigned hours on February 15, 1947, without five (5) days' advance notice.

2.—That, accordingly, the carrier be ordered to reimburse this employe in the amount of five (5) days' pay of eight hours each at his applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. A. Hutson entered the service of the carrier at its reclamation plant in Savannah, Ga., as helper on December 3, 1946. He remained in the service continuously from date of entry until the completion of his regularly assigned hours on February 15, 1947, at which time he was removed from the service without any advance notice either to himself or his committeeman.

The local chairman protested this action and endeavored to persuade the foreman to extend the five (5) days' advance notice required in the agreement but without success. Failing in his efforts to have the five (5) days' advance notice extended to Helper Hutson, the local chairman filed claim for five (5) days' compensation in lieu of the five (5) days' advance notice not granted, which claim was also denied by the foreman.

The claim has since been progressed through the regular prescribed order for handling grievances to the highest designated officer of the carrier with whom grievances are handled, and each successive officer with whom the dispute was progressed denied adjustment.

Helper Hutson was restored to service on March 3, 1947, and has remained therein continuously to date.

The agreement, effective March 1, 1945, is controlling.

POSITION OF EMPLOYEES: The aforesaid agreement contains no provision extending authority to the carrier to summarily remove an employe covered thereby from the service without granting the five (5) days' advance notice required therein.

employment rights. It was, therefore, incumbent upon carrier to restore him to duty on February 17, 1947, the date on which he had indicated he would be available, and carrier acted accordingly. Since there was no increase or reduction of force here involved, but rather a situation where a furloughed man returned to protect his regular assignment through seniority move, it was not necessary to give the notice claimed to be mandatory by the employees. (See Second Division Award 639.)

There is no merit in the employees' contention that Rule 12 (c) of the agreement was violated. On the contrary, carrier was complying not only with the agreement, in every respect, but also the Selective Service Act, which would not permit carrier to deny a veteran his guaranteed employment rights. The Board is, therefore, requested to deny the claim of the employees, as it is most unjustified and not supported by the plainly expressed terms of the agreement.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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's claim, that this Division lacks the right to adjudicate this dispute, is untenable. The Railway Labor Act was designed to be inclusive, rather than exclusive, within the limits of the particular jurisdiction allotted to each of the several divisions of the National Railroad Adjustment Board. The mechanics in the Savannah reclamation plant perform work in all or several of the crafts which are specifically designated by Section 3 (h) of the Railway Labor Act, to be within the jurisdiction of the Second Division. The controlling criterion is the nature of the work performed, and not the job title which the carrier sees fit to place on an employee. Jurisdiction is conferred so long as the actual work performed is the type of work which the Act expressly delegates to the Second Division. The acceptance of the Second Division as the appropriate agency for processing the disputes of the mechanics at this reclamation plant, automatically confers jurisdiction in cases involving these mechanics' helpers.

Neely's return from the armed forces, and the resultant displacement of Hutson as a helper, did not constitute a reduction in force within the purview of Rule 12 (c) of the controlling agreement. Therefore, Hutson was not entitled to five days' advance notice. Reduction of forces means a decrease in the number of people employed, and, in this case, the total number of helpers was not decreased by the substitution of Neely for Hutson. This Division has held that a person called to work to replace an employee on leave of absence is not entitled to notice when he is furloughed simultaneously with the return of the regularly assigned employee. See Awards 639, 558 and 561.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1949.