Award No. 1338
Docket No. 1264
2-UP-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That depriving Coach Cleaner Jose M. Romero of his right to work a minimum of 8 hours per day each on January 7, 8 and 9, 1948, was not authorized under the current agreement, and that accordingly the carrier be ordered to reimburse this employe for all of said time lost.

EMPLOYES' STATEMENT OF FACTS: Coach Cleaner Jose M. Romero, hereinafter referred to as the claimant, was employed as such by the carrier at Cheyenne, Wyoming, on September 24, 1947, and his assignment on the first shift was abolished effective December 15, 1947, which is affirmed by the copy of Bulletin No. 183, submitted and identified as Exhibit A.

The claimant then exercised his seniority rights in accordance with Exhibit A, and was assigned, effective December 18, 1947, to the second shift, and this transaction is affirmed by the copy of Bulletin No. 188, submitted and identified as Exhibit B.

The claimant remained on this regular second shift assignment from 3 P. M. to 11 P. M., 8 hours per day, 6 days per week, Monday to Saturday, inclusive, until the carrier declined to permit him to work his regular or any other assignment on Wednesday, Thursday and Friday, January 7, 8 and 9, 1948.

The Agreement effective November 1, 1934, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that this claimant became an employe on September 24, 1947, subject to all of the terms of the current agreement of November 1, 1934, by virtue of the Carmen's Special Rule 156 thereof, which reads:

> "COACH CLEANERS. Coach Cleaners will be included in this agreement and receive overtime as provided herein. Coach Cleaners at outlying points may be worked eight hours within a period of ten consecutive hours. They may be assigned to any other unskilled work during their eight hour period of service."

entitled to notice when he is furloughed simultaneously with the return of the regularly assigned employe. See Awards 639, 558 and 561." (Emphasis supplied.)

CONCLUSION

The carrier has shown that Rule 27 of the agreement is not applicable to the situation presented in this dispute because there was no reduction in force involved. There has been no violation of the agreement.

The claim is without merit and the carrier respectfully requests the Second Division, National Railroad Adjustment Board, to deny the claim.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the organization in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

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.

Sierra's return from the armed services, and the resultant displacement of claimant, a junior employe, under valid exercise of seniority, did not constitute a reduction in forces within the purview of Rule 27. Accordingly, there is nothing in the rules to require the carrier to give four days' notice as a condition precedent to furloughing claimant. See Award No. 1287 of this Division.

Ruling 15, approved by these parties under date of February 25, 1939, is advanced by claimant to escape the above-expressed conclusion. This ruling is special in nature and specific in application. It deals solely with replacements for regularly assigned employes laying off for periods of less than four days. Awards 558 and 561, Second Division, reflect that during the period in which Ruling 15 was negotiated and adopted, and before said awards were issued, contention had been made upon at least the two lines involved in said awards, that notice was required to be given furloughed employes taking the place of regularly assigned men laying off for short periods. These parties apparently sought to avoid similar controversy by the mutual understandings arrived at in Ruling 15. The language "without the customary four days' notice" appearing in said Ruling, we find was intended merely to negate the general proposition then being urged in connection with short term replacements. We do not find in Ruling 15 any clear intent to extend operation of Rule 27 to situations such as the one at hand.

Rule 27, Reduction of Force, gives a measure of protection to employes in connection with a matter entirely within the hands of management to exercise. Management, on the other hand, is only indirectly a party to the operation of seniority which basically concerns relations between the employes themselves. To exact a form of penalty, i. e., notice and continuance of work, from management under the facts of this case where displacement arose solely through exercise of seniority, would seem to lack justification unless clearly provided for by the rules. This clear indication of intent we find lacking here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.

DISSENT TO AWARD NO. 1338

The undersigned dissent from the majority decision of the Second Division of the National Railroad Adjustment Board in Award No. 1338.

The majority in their findings, reading in part:

> "Ruling 15, approved by these parties under date of February 25, 1939, is advanced by claimant to escape the above-express conclusion. This ruling is special in nature and specific in application. It deals solely with replacements for regularly assigned employes laying off for periods of less than four days. Awards 558 and 561, Second Division reflect that during the period in which Ruling 15 was negotiated and adopted, and before said awards were issued, contention had been made upon at least the two lines involved in said awards, that notice was required to be given furloughed employes taking the place of regularly assigned men laying off for short periods. These parties apparently sought to avoid similar controversy by the mutual understandings arrived at in Ruling No. 15. The language 'without the customary four days' notice' appearing in said Ruling, we find was intended merely to negate the general proposition then being urged in connection with short term replacements. We do not find in Ruling No. 15 any clear intent to extend operation of Rule No. 27 to situations such as the one at hand."

recognize Ruling 15 as being a negotiated exception to Rule 27 of the current collective agreement. Their decision ignores the necessity for negotiation of further exceptions and erroneously extends the above exception to cover other situations.

/s/ R. W. Blake
A. C. Bowen
T. E. Losey
Edward W. Wiesner
George Wright