

Award No. 1898
Docket No. 1737
2-PRR-URRWA,CIO-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C. I. O.

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement the Carrier improperly recalled R. E. Taylor from furlough, August 7, 1952.

2. That, accordingly, the Carrier be ordered to compensate M. F. Bartley, a senior Carman Helper, for all monies lost, due to this violation.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated July 1, 1949, and its subsequent amendments, copies of which are on file with the Board, and is, by reference hereto, made a part of this statement of facts.

At Altoona, Pa., Altoona car shops, Altoona works, The Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of carmen and carmen helpers.

M. F. Bartley is employed at the seniority point in the carman craft, and will hereinafter be referred to as the claimant.

The claimant, M. F. Bartley, who has standing as a car repairman helper as of April 7, 1941, was recalled from furlough as a car repairman helper, following the reduction in force when all jobs were abolished, due to the steel strike, August 25, 1952, at which time he was assigned as a car repairman helper.

R. E. Taylor, a junior car repairman helper, with roster standing of April 21, 1941, was recalled to work as a car repairman helper following the reduction in force, due to the steel strike, August 7, 1952, at which time he was assigned as a car repairman helper.

Claim was presented to the foreman on September 18, 1952 and denied by him October 15, 1952. The dispute was progressed to the superintendent October 16, 1952, discussed on November 7, 1952, denied December 12, 1952. Joint submission to the works manager requested January 2, 1953. The claim was presented to the works manager, evidence of which is submitted as employees' Exhibit A.

putes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION.

The carrier has established that the recall from furlough of R. E. Taylor to perform work as a car repairman helper (burner) at the tear-down operation, Hollidaysburg, was entirely proper; that such action did not violate any right claimant had under the applicable agreement; and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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.

During restoration of forces following shut-down involving many employes, and in order to facilitate the resumption of operations, seventeen helper burners who had been furloughed as such were recalled without written notice to claimant, who was a senior furloughed employe passed around. Rule 3-D-7 of the Agreement, requires that in such event each senior furloughed employe passed around shall be advised in writing to this effect.

The fact is not disputed but carrier seeks to avoid the application of the rule.

It shows that written run-around notices were sent to one senior furloughed employe for each junior employe recalled and additional notices within a reasonable time to the next senior employes in the event the senior employes already notified did not respond, and it shows that this practice was followed with the approval of a representative of employes organization pursuant to practice for several years on the property begun at the request of its Regional Director.

Consent and practice cannot be considered as an agreed interpretation of the rule, since the rule is too plain to require or permit such interpretation. It cannot be considered as a waiver since one may not waive a rule made for the benefit of a third party. It cannot be considered as a modification of the rule since these representatives were without authority to change it. Therefore we must find that the rule was violated.

As showing that claimant waived the benefit of written notice and suffered no less by its omission, carrier submits statement of a clerk that claimant orally asserted that he did not want the work as burner, and that he was told of the recalling of junior helpers and of his right to displace. Such uncorroborated statement made from memory nearly two years after the reported conversation, is not a convincing showing that claimant would

have refused the assignment had he received notice as required by the rule, and even if claimant's knowledge of the recall of a junior employe required him promptly to seek to displace him there is no showing that he had such knowledge before his own recall to another position.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1955.