

Award No. 3109

Docket No. 2831

2-PULL-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT. A. F. of L.-C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Electricians E. W. Swerzynski, J. Bodis, J. S. Macsek and F. Hofferma were not given a five working day notice of furlough exclusive of the day the notice was served.

2. That accordingly they be compensated for each day less than the five working day notice that they were entitled to in accord with the claim shown in Exhibit A, page 1.

EMPLOYEES' STATEMENT OF FACTS: Electrician E. Swerzynski was served a notice of furlough on Saturday, November 17, 1956. This notice furloughed him effective November 23, 1956, which resulted in a four work day notice as his work days were as follows: Sunday 18th, Monday 19th, Tuesday 20th, Wednesday 21st and Saturday 24, 1956. See Exhibit A, page 3.

Electrician J. Bodis was served a notice of furlough on Saturday, November 17, 1956. This notice furloughed him effective November 23, 1956, which resulted in a four work day notice as his work days were as follows: Sunday 18th, Monday 19th, Tuesday 20th, Wednesday 21st, and Saturday 24, 1956. See Exhibit A, page 3.

Electrician J. Macsek was served a notice of furlough on Monday, November 19, 1956. This notice furloughed him effective November 23, 1956, which resulted in a two work day notice as his work days were as follows: Tuesday 20th, Wednesday 21st, Saturday 24th, Sunday 25th and Monday 26, 1956. See Exhibit A, page 3.

in the past. This is very convincing proof of what the parties mutually intended when the agreement was negotiated. A denial award is required."

Finally, the company wishes to cite Second Division Award 2480 (Carl R. Shedler, referee), which dispute involved the question of whether the effective date of filing of a claim should be the date claim was received (March 2, 1955) or from date mailed (March 1, 1955). In the dispute settled under Award 2480 the organization took the position which the company takes in this dispute; namely, that the dates to be counted in applicable time limits should date from date letter is mailed, which position was sustained by the Board. Award 2480 reads in pertinent part as follows:

" . . . On March 1, 1955 the organization mailed a letter of protest to the carrier which was received by the carrier at Macon, Georgia on March 2, 1955. The carrier maintains that the time should be reckoned from January 1 to March 2, a total of sixty-one (61) days or one (1) day beyond the time limit. The organization contends that the grievances occurred when the claimant received his check on January 14 and that the claim was filed forty-eight (48) days thereafter, well within the time limit. We believe the carrier's position is unrealistic. **We believe it is reasonable to use the date the letter was mailed, which in this case would be within the sixty (60) day limit, and not the date it was actually received;** a custom or practice recognized in many business transactions." (Emphasis inserted.)

CONCLUSION

In this ex parte submission the company has shown that management complied with the provisions of **Rule 48. Advance Notice of Force Reduction** which requires that management furnish a five work days' notice of furlough (exclusive of day notice is served). Also, the company has shown that Rules 49 and 50 support management's position in this dispute. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim in behalf of Electricians Swerzynski, Bodis, Macsek and Heffernan is without merit and should be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

The issue for determination is, when was notice served within the meaning of Rule 48? The rule provides that "not less than 5 working days' notice (exclusive of day notice is served) shall be given to employes to be furloughed".

On November 16, 1956, carrier deposited in the United States mail, registered, return receipt, notices of furlough effective November 23, 1956,

addressed to each claimant at his last known address. For purposes of this case, Heffernan is treated the same as Swerzynski and Bodis to each of whom the notice was delivered on November 17, 1956. Notice was delivered to Macsek on November 19. The organization contends that these notices were not served until delivery was made at the employe's last recorded address, whereas the carrier maintains they were served on the date of mailing.

In our view, the words "served" and "given" as used in Rule 48 should be treated as synonymous. The generally recognized rule is that where notice is required by law or by agreement to be given and no mode of service is pointed out, the notice shall in general be given personally. Where, as here, the mail is used, we are of the opinion that the notice required by Rule 48 is given personally where the evidence shows that it was delivered on a specified date at the address shown on the envelope.

The carrier suggests that the five working days mentioned in the rule should be construed to mean the facility or the position worked, and not the individual to whom the notice is required to be given, and attention is called to Award 1469. In view of the clear and unambiguous language of Rule 48 we are unable to agree. See Award 1500. In Award 1469 claimant was given five working days' notice and we see no inconsistency in what we held there and our determination in this case.

Carrier also contends that a sustaining award could result in employes being furloughed out of seniority order. Rule 48 requires not less than five working days notice, and we see no sound reason, nor is any suggested, why more than the minimum notice could not be given if necessary. See Award 1500.

Claimant's relief days were Thursday and Friday, November 22nd and 23rd, 1956. We hold that notice was served on Heffernan, Swerzynski and Bodis on November 17, with the result that each of these three claimants was given but four working days' notice; and notice was served on Macsek November 19, with the result that he was given but two working days' notice. Claimants who were served notice on November 17 are entitled to compensation for loss of one day's pay, and claimant served on November 19, is entitled to compensation for loss of three days' pay.

AWARD

Claim sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Arder of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1959.