Award No. 3591

Docket No. 3194

2-T&P-BK-'60

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. 121, RAILWAY EMPLOYES' DEPARTMENT, A.F. of L.-C.I.O.—(Blacksmiths)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the following employes were improperly furloughed:

   W. E. Scarlett and Sid Cowart—Blacksmiths

   S. L. Brooks, Will Minneweather and L. G. Downs—Blacksmith Helpers.

2. That accordingly the Carrier be ordered to compensate W. E. Scarlett, S. L. Brooks, Will Minneweather and L. G. Downs four (4) days' pay at the applicable rate and that they be ordered to compensate Sid Cowart two (2) days' pay at the regular rate.

EMPLOYES' STATEMENT OF FACTS: The Texas and Pacific Railroad, hereinafter referred to as the carrier, has a mechanical department and a reclamation plant located at Marshall, Texas, in each of which was located a blacksmith shop. Prior to May 15, 1948, there were two seniority rosters for the blacksmiths and helpers, one for the reclamation plant and one for the mechanical department. May 15, 1948, a Memorandum of Agreement was signed consolidating these two seniority rosters, giving prior rights to the men in each department. Upon signing of the new agreement dated September 1, 1949, this memorandum agreement became Rule 20, paragraph (a) 1, which reads as follows:

> "Mechanics, helpers and apprentices employed in the Reclamation Plant prior to May 15, 1948, shall hold prior rights to positions in their respective crafts in the Reclamation Plant. Mechanics, helpers and apprentices employed in the Maintenance of Equipment Department prior to May 15, 1948, shall hold prior rights in their respective crafts in the Maintenance of Equipment Department".

On the property it was contended the notice lacked one day of being sufficient to meet the 72 hour requirement contained in Rule 22 (b) because it was posted on Friday, June 25, 1954, one of claimant's rest days and while he was off duty by reason thereof. The seventy-two hour requirement in Rule 22 (b) is in no way qualified by relating it to work days. We think the rule contemplates the seventy-two hour notice may be posted at any time and will be effective as to all employes affected thereby whether they are, at the time, either off or on duty. See Award 1469 of this Division.

It is the organization's thought that the words 'men affected,' as used in Rule 22 (b), and of whom a list is to be furnished the local committee, includes all employes affected thereby whether because of the fact that their positions are being abolished or because of the fact that they are being displaced, in the exercise of their seniority, by those whose positions are being abolished. Occupants of positions being abolished in a reduction of force by the carrier may either lay off or exercise seniority as per Rule 24 of the parties' agreement. See Rule 22 (a) thereof. We think the language used in Rule 22 (b) should be applied to the subject of the bulletin to which it relates. In that sense the 'men affected' are those who position are being abolished. If we were to extend its meaning beyond that subject, and relate it to all employes who might become affected because of the fact that the men whose positions were being abolished might have and would exercise their seniority, we would place on the carrier an almost impossible, and certainly an impractical requirement, for carrier would then have to anticipate what each employe was going to do. We do not think such was either the intent, meaning or purpose of the language used.

When the bulletins advised all employes concerned of what positions were being abolished, and who occupied them, carrier thereby sufficiently informed them of the possibility that they might be displaced from the positions they then held by the men, whose positions were being abolished, exercising their seniority. That is exactly what happened here. In such instances the rules do not require a seventy-two hour notice.

We think the bulletin posted, copies of which were furnished the local committee, fully met the requirements of 22 (b). In view thereof we find the claim to be without merit."

For the reasons stated above, the carrier respectfully requests the Board to deny the claim in all respects.

FINDINGS: The Second Division of the Adjustment Board, based 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 waived right of appearance at hearing thereon.

The principle involved in this case was fully discussed and correctly determined in our Award No. 2274. In view of what was said there, in which we concur, the instant claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 8th day of November 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3591

The majority in Award 3591 have based their denial award on determinations set out in a previous award (2274). Thus the majority continue to compound error by continued promulgation as dictum that which is false and erroneous.

The majority here again improperly assert that the so-called "abolition of positions" can be used as a device to negate the Reduction in Force Rule (Rule 18) providing that "Four days' notice will be given employe affected before reduction is made * * *."

The majority in reaching this erroneous conclusion have for all practical purposes removed Rule 18 from the agreement.

We dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink