

Award No. 3691
Docket No. 3527
2-C&O-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION AND HOCKING DIVISION)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the current agreement, particularly Rule 27 when it failed to notify or call Carmen Helpers W. C. White and Ambrose Barrett for service at 7:00 A. M. on July 14, 1958 at Peach Creek, West Virginia and junior Carmen Helpers were called and worked on said date.

2. That accordingly the Carrier be ordered to compensate the aforesaid employees eight (8) hours each at the applicable time and one-half rate of pay for July 14, 1958.

EMPLOYEES' STATEMENT OF FACTS: On July 11, 1958, The Chesapeake and Ohio Railway Co., hereinafter referred to as the carrier, posted Bulletin No. 28 at its Peach Creek, W. Va. shops increasing its force of carmen helpers by 16 men effective 7:00 A. M. July 14, 1958 to service stored cars in the Logan, W. Va. coal fields.

Also on July 11, 1958, the carrier posted Bulletin No. 29 at its Peach Creek shops, further increasing its force of carmen helpers by 30 men effective 3:00 P.M. July 14, 1958, directing them to report to their regular assignments covered by Bulletin No. 369 dated June 16, 1958.

Carmen Helpers W. C. White and Ambrose Barrett, hereinafter referred to as the claimants, hold seniority as such at Peach Creek and were included on Bulletin No. 28, but were not notified by the carrier of their recall to service effective 7:00 A. M. July 14, 1958.

The carrier's supervisor at Peach Creek, Mr. Timmons notified all other men included on Bulletins Nos. 28 and 29 of their recall to service either by telephone or personal visit to their residence, part of whom lived a greater distance from Peach Creek than the claimants. Also in the case of Claimant White, it should be noted that Mr. Timmons travelled by Claimant White's residence twice a day travelling to and from work.

expressed or implied. The rule simply states that senior laid off employes will be given preference of reemployment if they can report within a reasonable time.

The rule relied upon by the employes makes no mention of any manner in which employes should be notified of recall and nowhere in the rule does the word "telephone" or the word "messenger" appear. It is just as logical to claim that the rule requires notification of recall by carrier pigeon, smoke signal, etc., as it is to claim that notification by telephone or messenger is required as the employes are doing in this case. The employes are endeavoring to have your Board revise the rule by issuing an interpretation which would insert language which the rules does not contain.

Had either White or Barrett, or any other employe for that matter, failed to report within a reasonable time, as stated in Rule 27(c), he would then have been notified by U. S. mail that he stood for work and necessary action would be required by the employe if he desired to retain his seniority rights. If the rule had required such notice be mailed at the time that the bulletin was posted, which it definitely does not, it is doubtful if such notice would have been received by either White or Barrett in time for them to have reported and worked the 7:00 A. M. shift on July 14.

It is abundantly clear that the claim of the employes is without merit and carrier asks that the claim be denied in its entirety.

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 were given due notice of hearing thereon.

This claim involves the same Rule as Award 3690 and necessitates the same conclusion with regard to Claimant Barrett, who was not notified in time to resume work until the following day.

While Claimant White was not informed of the work resumption in time to report for the special call at 7:00 A. M. on July 14th, he was informed in time to resume his regular assignment at 3:00 P. M. on that day. Consequently he suffered no loss of pay.

AWARD

Claim sustained as to Claimant Barrett.

Claim denied as to Claimant White.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1961.