

**Award No. 3804**

**Docket No. 3302**

**2-SOO-MA-'61**

**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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 66, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

**SOO LINE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. The Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, hereinafter referred to as the carrier, on September 19, 1957 did cause and instruct Machinists R. D. Foster, L. F. Benjamin and O. J. Hensen and Machinist Helper A. V. McCoy, all holding regularly assigned positions at Fond du Lac Shop, to be furloughed without any advance notice at 4:30 P. M. DST on aforesaid date and recalled said employees to return to work at 6:30 P. M. DST same date, carrier refusing to compensate said employees for time lost between 4:30 P. M. and 6:30 P. M. or two hours in accordance with the language of the Shop Craft rule applicable to same as amended.

2. The carrier be ordered to pay time claims filed in due form on behalf of Machinists R. D. Foster, L. F. Benjamin and O. J. Hensen and Machinist Helper A. V. McCoy, hereinafter referred to as claimants, in the amount of two (2) hours at the pro rata rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** On the date and time spelled out in the employees' dispute, the carrier notified each claimant that he would be relieved of his regularly assigned duties at once on the second shift at Fond du Lac, this because of an electric power failure to said carrier.

On or about 6:30 P. M., same date, the carrier called the claimants at their homes and requested that they return to work. The carrier then took the position said claimants involved in this instant case were not entitled to compensation between the hours of 4:30 P. M. and 6:30 P. M.

Therefore, because of said carrier's position, time claims and grievances were filed on behalf of said claimants in this instant dispute and respectfully

"When Rule 69 has application, the Company is not required to give employees, whose services are no longer needed because the work they normally performed has ceased to exist, the 5 working days' notice required by Rule 48 before it can place them on a furloughed status. It can do so immediately but if it should require any employe or employes so furloughed to perform work it must pay them according to provisions of Rule 69."

Rule 69 referred to is comparable to carrier's Rule 26 and Rule 48 referred to is comparable to carrier's Rule 23.

In summary, carrier's position is this: The electrical power interruption constituted an emergency. The shut down of shops, due to such emergencies, and the time allowance when shops are so closed is governed by Rule 26. Under Rule 26 carrier may release employes immediately. Only those employes required to work during the shutdown are entitled to payment. Claimants were not required to work between 4:30 P. M. and 6:30 P. M. Claimants were paid for all time actually worked or held on duty.

All data submitted in support of the carrier's position has been presented to the committee and made a part of the particular question in dispute.

Carrier contends that the claim is not supported by the rules and respectfully requests that it 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.

On September 19 1957 an electrical storm struck North Fond du Lac, Wisconsin, at about 3:30 P. M., resulting in a temporary shutdown of electric power to the carrier's shop facilities at that point. Claimants were employed in the locomotive repair shop on the second shift, 4 P. M. - 12 Midnight. After unsuccessfully attempting to ascertain the probable duration of the shutdown, the carrier suspended shop operations and sent the second shift employes home except for a few who were needed for running repairs. Power was restored about 5:30 P. M., and claimants were recalled and reported at 6:30 P. M. They were paid time from 4:00 to 4:30 P. M., and from 6:30 P. M. to the end of their shift. They claim pay for two hours off duty on account of the emergency.

The claim is based on the premise that these employes were furloughed without prior notice required by the rules.

The carrier points to Rule 26 to support its position. This rule reads:

"Employes required to work when shops are closed due to breakdown of machinery, floods, fire and the like will receive time for regular hours, and overtime for overtime hours."

Under this rule it is said the parties impliedly acknowledged that employees excused from work because of emergency shut down due to floods, fires and the like are not entitled to advance notice or to pay for time not worked.

Rule 23 of the shop crafts agreement provides that when it is necessary to lay off employees for any reason, four work days' notice will be given employees affected before reduction is made.

There appears to be some measure of support for the carrier's position that Rule 26, which is concerned with emergencies, should be construed to provide certain exceptions to the 4 days' notice requirement of Rule 23. It will be noted, however, that unlike the factual basis presented in Award No. 1701, a supplemental agreement dated August 21, 1954, was entered into by the parties in this case. Article VI thereof reads:

"Rules, agreements, or practices, however established, that requires more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the carrier's operations are suspended in whole or in part, and provided further that because of such emergency, the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed."

The carrier maintains that Article VI of the August 21, 1954 agreement did not impose advance notice requirements where none had previously existed. We do not so construe it. It reduces advance notice of abolishing positions or making force reductions to sixteen hours. In that respect it modified Rule 23. But it goes beyond the sphere of force reduction and job abolition, and provides for 16 hours' advance notice in emergencies which require suspension of operations in whole or in part. These emergencies include not only such occurrences as are commonly regarded as Acts of God, but also strikes.

In view of the broad sweep of Article VI, we conclude that the storm at North Fond du Lac on September 19, 1957 which required the temporary shutdown of the carrier's shops was within the purview of its advance notice requirement and no notice having been given, claimants should have been paid the two hours in question at pro rata rate.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

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