

Award No. 4089

Docket No. 3858

2-FEC-CM-'62

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. 69, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O.
(CARMEN)**

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carmen C. W. Taylor, G. W. Nation, G. Goodson, G. W. Beal and L. O. Innes were improperly laid off effective at the close of their shifts July 29, 1959 and

2. That accordingly, the Carrier be ordered to compensate each of them in the amount of seven (7) days' pay account not being given proper notice before reduction in force was made.

EMPLOYES' STATEMENT OF FACTS: The above named employees of the Florida East Coast Railway Company were regularly assigned as carmen at the carrier's Bowden Shops up to July 29, 1959, upon which date they were advised that effective with the close of their shift that day they were laid off as a result of District Car Foreman G. O. Gammon's Bulletin No. 376.

This dispute has been handled with the carrier up to and including the highest officer designated by the carrier to handle such disputes with the result that they have declined to make satisfactory adjustment.

The Agreement effective May 1, 1953, is controlling.

POSITION OF EMPLOYES: It is an indisputable fact that the claimants were employed as carmen. By virtue of such fact, they were not subject to be laid off, except in accordance with the expressed provisions of Rule 16 captioned "Reduction of Forces" and therefore, since they were laid off without the proper required notice explicitly provided for in paragraph (b) of this rule reading:

"Seven calendar days' notice will be given employes affected before reduction is made and lists will be furnished the Local Committee."

therefore, no other individuals are involved, insofar as this dispute is concerned.

Under the provisions of Rules 13 and 14 of the schedule Agreement (Item No. 5, carrier's statement of facts), all five of the carmen identified by the local chairman could have displaced men junior to them on regular positions at the time that they were affected, although they did not elect to do so. What is more, as will be developed hereinbelow, two of the claimants were displaced from their assignments before the transfer of work even occurred. Consequently, irrespective of the merit or lack of merit of the employees' position, these two claimants must be disregarded and, since the remaining three claimants could have exercised seniority at the time affected, but elected not to do so, claim in their behalf is likewise invalid. In support of the Railway's position in this respect, there is shown below the date on which each of the claimants was affected and the date on which each exercised his seniority rights:

"Name	Affected by	Date Affected	Date Elected to Exercise Rights
C. W. Taylor	Position abolished (Bulletin No. 376)	July 29, 1959	September 25, 1959
J. W. Nation	Displaced	July 28, 1959	September 22, 1959
G. W. Beal	Displaced	July 28, 1959	September 21, 1959
G. D. Goodson	Position abolished	June 29, 1959	October 26, 1959
L. O. Innes	Displaced	July 14, 1959	September 23, 1959"

Carmen Goodson and Innes were not affected in any manner by the reassignment of the work subject of claim as they were affected, as indicated above, considerably prior thereto and held sufficient seniority to hold regular positions. As previously stated, they are not, therefore, entitled to any consideration as claimants in this dispute. The other three men were affected by the reassignment of the work, Claimant Taylor being the incumbent of one of the positions abolished and Messrs. Nation and Beal being displaced by men affected by the reassignment of work and abolishment of positions. However, Claimants Taylor, Nation and Beal each had sufficient seniority to hold regular positions at the same rate of pay but personally elected to become furloughed as indicated above and, therefore, any financial loss suffered by them was of their own volition or as stated by the First Division (Referee Francis J. Robertson) in Award 14141:

"Upon the record we find that such time as was lost by claimant . . . was of claimant's volition . . . the facts of record will not support a sustaining award."

For the reasons stated herein, the claim should be dismissed or 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.

Due to a reduction of traffic, inspection and minor car repair work was transferred from Interchange tracks at Jacksonville to Bowden Yard, seven miles away, eleven car inspectors' positions at Interchange were abolished, and six new car inspectors' positions at Bowden Yard were established and bulletined, making a net force reduction of five employees.

The force reduction rule is Rule 16, paragraph (a). It provides that in the reduction of forces "seniority as per Rule 13" shall govern. Paragraph (g) of Rule 13 provides for exercise of seniority by employees displaced by abolishment of positions, and neither Rule 13 nor Rule 16 suggests that force reduction cannot involve abolishment of positions.

Paragraph (b) of Rule 16 provides:

"Seven calendar days' notice will be given employees affected before reduction is made * * *." (Emphasis ours.)

The force reduction was made on July 29, 1959, and notice was given on July 22, naming the employees whose positions were abolished.

The claim is that the five claimants were not given the seven days' notice. However, claimant Taylor was one of the employees directly affected, and his name was on the notice; claimant Goodson's position had been abolished a month before, and claimant Innes had been displaced by a senior employee fifteen days earlier. Consequently, the claim fails as to them.

The other two claimants, Nation and Beal, were bumped on July 28, 1959, by two of the employees whose positions were abolished by the July 22 notice effective July 29. The claim is that Nation and Beal were therefore employees affected by the force reduction, and thus were entitled to seven days' notice "before reduction is made."

But they could not have been named in the July 22 notice, because their displacement was not known until six days later. Consequently, the claim must mean that they were entitled to notice on July 28, in which case, under Rule 16(b), the reduction could not be made until seven days later.

The Rules contain no such provision; nor do they require seven days' notice to employees bumped, or seven days' delay before the senior employees can receive the benefit of their seniority rights.

The causes of Nation's and Beal's displacements were the respective elections by two senior employees to bump them. Since these causes intervened between them, the force reduction and the displacements do not constitute cause and effect, and these claimants cannot be held to have been affected by the reduction itself. If they were affected by it, within the meaning of the rule, so were the employees they may then have displaced, and so on indefinitely. We necessarily hold that the employees affected, within the meaning of Rule 16(b), were those directly concerned.

This concurs with Awards 2274 and 3591, in which this Division also held that notice of the positions abolished is notice to all other employees of their possible displacement by their seniors, if any, among the employees named.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1962.