

Award No. 4395

Docket No. 4251

2-GTW-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

**The Second Division consisted of the regular members and
in addition Referee P. M. Williams when award was rendered.**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 92, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That Car Inspector James E. Warthen is entitled to be additionally compensated for one days pay or eight (8) hours at the pro rata rate, due to not receiving the required four (4) days notice that he was being furloughed effective March 11, 1961.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector James E. Warthen, hereinafter referred to as the claimant was regularly employed as a car inspector in the transportation yards of the Grand Trunk Western Railroad Company, at Pontiac, Michigan, on an assignment of Thursday through Monday, with Tuesday and Wednesday as rest days.

On Tuesday, March 7, 1961, the following bulletin was posted on the bulletin board:

Pontiac, Michigan, March 7, 1961
Our File: 8000

BULLETIN

Effective with close of the work day, Saturday, March 11, 1961 all employes represented by the Brotherhood of Railway Carmen of America at Pontiac will be furloughed.

cc—Mr. Washburn, Local Chairman
cc—Walter Chaffee, General Chairman

Signed/ R. E. Sherman
Car Foreman

Agreement dated at Detroit, Michigan, July 26, 1950 and effective as of September 1, 1949, is controlling.

POSITION OF EMPLOYES: As the claimant was on his rest days on Tuesday and Wednesday, March 7th and 8th, he was not notified until he

1962 agreement with the non-operating employees, where existing advance notice rules are amended effective July 16, 1962 to provide for "not less than five (5) working days' advance notice".

A further point to be considered in this case is the fact that the employees in requesting that the claimant be allowed one day's pay for time not worked are in effect requesting that rule 22 be applied as if it were a guarantee of work rule. In this respect, the Board in Second Division Award No. 1469, stated, of a rule which is similar to rule 22 involved herein, that:

"Rule 48 is not a guarantee of work rule in any sense of the word." Inasmuch as rule 22 clearly is not a guarantee of work rule, the rule does not support the claim, or the application of the rule that the employees contend for.

In conclusion, the carrier wishes to point out that the employees have failed to establish that the carrier has ever issued personal notice of furlough to employees when an entire craft or class of employees have been furloughed. Further, carrier's position that rule 22 in itself does not require that personal notice of furlough be issued to the individual employee, whether on duty or off duty, is supported by the Second Division's "Findings" in Awards 183, 1246 and 2274, as well as by the employees themselves, through their silent consent when carrier posted blanket bulletins of reduction in force at Pontiac, Michigan, in the past.

The instant claim is not supported by either the working agreement or the past practice in effect at Pontiac, Michigan, and should be denied and carrier requests that this Board so award.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On Tuesday, March 7, 1961 Carrier posted on its bulletin board at Pontiac, Michigan Shops a notice which provided:

"Effective with close of business of the work day, Saturday, March 11, 1961 all employees represented by the Brotherhood of Railway Carmen of America at Pontiac will be furloughed."

Claimant's regular rest days were Tuesday and Wednesday and since he was not sent an individual notice of the furloughing he learned of it upon his return to work on Thursday, March 9, 1961; which was 3 days before the effective date of the notice.

It is the claim of the Organization that claimant should have been allowed to work until March 12, or in lieu thereof, receive one days pay at the pro rata rate because of the provision of Rule 22 (a) which states:

"When the force is reduced, * * *. Four (4) days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee."

Since the claimant was not on the job to read the notice placed on the bulletin board the Carrier, to comply with the quoted portion of Rule 22(a), should have given individual notice to him. We are of the opinion that the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.