

Award No. 4640
Docket No. 4584
2-P&LE-TWUOA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS
UNION OF AMERICA, A. F. of L.-C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: Patsy DeChellis Carman, who held a regular assigned Carman position at McKees Rocks, Pa., reported to his regular assigned position on December 10, 1962 after an absence because of illness starting December 3, 1962. Claimant Patsy DeChellis was advised on December 10, 1962 that he was furloughed effective December 10, 1962, and was not permitted to perform work on his regular assigned position as Carman on December 10, 1962 or any subsequent date. The Organization asks that Patsy DeChellis be compensated for all time lost starting December 10, 1962.

EMPLOYEES' STATEMENT OF FACTS: Patsy DeChellis was regularly employed and regularly assigned to a car repairman position in the car shop in McKees Rocks, Pa., which is a facility on the carrier's line used to build and repair freight cars. Claimant was employed on the first shift 7:00 A. M. to 3:30 P. M. with Saturday and Sunday as rest days.

On Monday, December 3, 1962 claimant notified the carrier at the starting time of his assigned position that he would be unable to report for work until further notice because of illness. Sometime after claimant notified the carrier on December 3, 1962, the carrier posted a notice in the K & S Shop advising certain employees that they would be furloughed with the close of business on Friday, December 7, 1962. The name of claimant Patsy DeChellis appeared on the list as one of the employees to be furloughed effective at the close of tour of duty December 7, 1962.

Claimant did not return to work during the period of December 3, 1962 through December 7, 1962 or his two (2) assigned rest days Saturday and Sunday December 8 and 9, 1962.

Claimant did return to work on Monday, December 10, 1962 at his regular assigned position and on his regular starting time. The carrier advised claimant then that he was furloughed effective immediately. Claimant was not permitted to work on December 10, 1962 or any date after December 10, 1962.

tion failed to provide the agreement support necessary to sustain the claim. The carmen's agreement does not contain such a penalty pay rule, therefore, it follows that lacking such agreement support the claim must be denied.

In the absence of a rule in the agreement which would support the claims for penalty pay as presented, it is clear that a sustaining award would, in effect, establish a new rule without having adhered to the negotiatory process required by the Railway Labor Act. This board has repeatedly held that it is without authority to revise, change, modify, rewrite or expand agreements. See Awards 1122, 1130, 1164, 1181, 1386 and 1486, among others.

The petitioning organization has been before this tribunal on numerous occasions, and for sundry reasons, in unsuccessful efforts to secure unwarranted penalty payments. For example, see this division's Awards 3672, 3454, 3339, 3338, 3337, 3220, 3096, 3040 and 2176.

The claim for penalty pay in this dispute certainly cannot be justified and carrier respectfully requests that the claim be denied. It was held by this division, in Award No. 3672, involving the same parties here involved:

"* * * In the absence of a rule in the Agreement which would support the penalty claims, they will have to be denied." (Referee Mitchell)

CONCLUSION: Carrier has shown that the claim filed by the international representative of the carmen's organization for hearing before this board is not the same claim initially presented and subsequently discussed on the property. The claim filed with this board has not been handled on the property in accordance with the agreement or in the manner prescribed under the Railway Labor Act. Carrier requests that the claim be dismissed.

Should the board assume jurisdiction of this case:

Carrier has hereinbefore shown that bulletin containing notice of abolishment of positions and notice of furlough was duly posted on bulletin boards in the McKees Rocks area and at the scrap and reclamation plant, and a copy of same was furnished the local committee of the carman's organization. The carmen's agreement does not require that individual notices be given to each employe affected nor does it require that notices be sent to employes off duty for any reason.

Carrier has also shown that claimant had marked off duty account of sickness the same day notice was posted and did not contact carrier as to his return to work until he reported for his assignment the following Monday.

It has also been shown that the claim for penalty payment lacks agreement support and therefore must be denied. This position is supported by numerous awards of the Second Division, National Railroad Adjustment Board.

Carrier respectfully submits, therefore, that the claim is without merit and requests that same 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 dis-

pute 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.

The Carrier concedes that, in some instances individual notices have been given to specifically affected employes under Rule 40(b). Rule 11 forbids discrimination against an employe kept from work account of sickness. If some employes are notified individually, all of those similarly situated must be so notified, to comply with that rule.

AWARD

Claim sustained for four days' pay in accordance with the claim as originally filed on the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.