

Award No. 5193

Docket No. 4879

2-NYC-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE NEW YORK CENTRAL RAILROAD
(Western District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement, particularly Rule No. 27, as amended by the Agreement of June 5, 1962 when the Carrier furloughed 1 painter, 2 carmen and 15 carmen helpers without five (5) working days advance notice.

2. That accordingly the Carrier shall be ordered to compensate each of the employees listed below one day's pay at the prevailing rate of pay in compliance with the controlling Agreement.

E. Carlson	Painter
M. Moleski	Carman
S. Gentile	Carman
G. (John) DiLemme	Carman Helper
W. Krupinski	Carman Helper
R. Sawyers	Carman Helper
C. Elliott	Carman Helper
K. Lambert	Carman Helper
P. Smith	Carman Helper
J. McCroskey	Carman Helper
A. Salo	Carman Helper
W. Allen	Carman Helper
T. Maresh	Carman Helper
R. Rehor	Carman Helper
J. Beregasazy	Carman Helper
B. Newsom	Carman Helper
I. Tennant	Carman Helper
E. Kelner	Carman Helper

EMPLOYEES' STATEMENT OF FACTS: On February 10, 1964 the carrier at 12:15 P.M. posted the following notice on the Bulletin Board at the Ashtabula, Ohio Reclamation Plant.

"NEW YORK CENTRAL SYSTEM

Ashtabula, Ohio, February 10, 1964

10.4 B - hq

BULLETIN

THE FOLLOWING EMPLOYEES WILL BE FURLOUGHED INDEFINITELY AT THE END OF THEIR TRICKS ON FRIDAY, FEBRUARY 14, 1964:

Carman Painter

E. Carlson

Carmen

M. Moleski

S. Gentile

Carman Helpers

G. (John) DiLemme

W. Krupinski

R. Sawyers

C. Elliott

K. Lambert

P. Smith

J. McCroskey

A. Salo

W. Allen

T. Maresh

R. Rehor

J. Beregsazy

B. Newsom

L. Tennant

E. Kelner

EMPLOYEES LAID OFF WILL KINDLY TURN IN COMPANY TOOLS, GOGGLES, RULE BOOKS AND ANNUAL PASSES TO THEIR FOREMAN.

FURLOUGHED EMPLOYEES WILL PLEASE CHECK IN OFFICE REGARDING THEIR DISPLACEMENT RIGHTS.

**R. T. Tomlinson, Manager
Scrap and Reclamation**

cc: Mr. Dan. Suchala"

The first shift employed at the Ashtabula Scrap and Reclamation Plant of the Carrier is the day shift, and the notice posted at 12:15 P.M. on February 10, 1964 was counted as one of the five working days' notice by the Carrier.

This dispute has been handled with all Officers of the Carrier designated to handle such disputes, including Carrier's highest designated Officer, all of whom have declined to make satisfactory adjustment.

Carrier respectfully requests the Board to deny this claim in its entirety, as it is wholly without merit for the reasons shown.

All facts and arguments presented herein have been made known to the Employees either orally or by correspondence in the handling of the claim on the property.

An oral hearing is requested unless after reviewing Employees' Submission, Carrier decides to waive hearing.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

The question is whether five working days or five calendar days would be used in determining the five working days involved.

A notice was posted at 12:15 P.M. on February 10, 1964, a Monday in the work week.

The first shift of the work week started at 7:30 A.M., February 10, 1964, a Monday, and went until 4:00 P.M. of that day.

The notice was posted at 12:15 P.M. on February 10, 1964, a workday, a Monday, and was counted as one of the five days of advance notice given by the Carrier to the employees of a force reduction.

The first day to be counted was February 10, 1964, as it was a long accepted practice since November, 1930, that the day the notice was posted, during regular working hours, was to be counted as one of the advance days of the notice; Friday, February 14, 1964, was the fifth advance day of the said notice.

The claimants were given five calendar days' notification of the force reduction in accordance with the past practice on the property. The Employees contended that February 10, 1964, the date the notice was posted, cannot be considered as the first of the five days worked.

The five day notice does not have to be given five working days before the first day can be counted as given. Calendar days are counted for the five days' notice given in accordance with past practice since 1930; no exception was ever taken to the practice by employee representatives. The count starts on the day the notice is posted.

In accordance with the agreement and the rules, the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employees' Statement of Facts reads as follows:

"When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours, the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964, addressed to Local Chairman G. C. Watkins, he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employees' Statement of Facts, quoted above, it will be noted that it was the Carrier who denied that there was any such an agreement. In the findings of the majority, quoted below, they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied, but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the manner in which Carmen would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with Unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P.M., his quitting time, and left; then state that the Carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit, but they could not do so. Therefore, the inspector only stayed on until 11:00 P.M., his quitting time, and left. Accordingly, the Carrier did not violate the agreement by not assigning overtime work which was not needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we, therefore, likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger