

Award No. 5513

Docket No. 5316

2-C&O-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chesapeake and Ohio Railway Company violated the current agreements, particularly Mediation Agreement of June 5, 1962, as per Article 3, and Rule 27 (b) Shop Crafts Agreement by its failure to give a five working day advance notice before reducing forces at the Diesel Engine and Coach Yard Repair Shop at Charlottesville, Virginia.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to additionally compensate the following Electricians: B. D. Sibley, R. A. Morris and E. L. Scruggs in the amount of eight (8) hours per day, five days per week subsequent to September 10, 1965, and claim to continue until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, owns and operates a Diesel Engine and Coach Yard Repair Shop at Charlottesville, Virginia, at which D. B. Sibley, R. A. Morris and E. L. Scruggs, hereinafter referred to as the claimants, are employed. Claimants hold seniority as electricians at these shops under the provision of Rule 31 of the Shop Crafts Agreement.

Under date of September 3, 1965, carrier posted Bulletin No. 54 (copy attached as Exhibit A), which did not list the claimants as being furloughed, nor was any list of employees to be furloughed furnished to the local committee.

This dispute has been handled with the Carrier up to and including the highest designated officer of the Carrier handling such disputes, with the result that all have declined to make a satisfactory settlement.

The agreement of July 21, 1921, as subsequently amended, is controlling.

tion became available. Morris was also called for temporary work in October, 1965, but he failed to report. In April, 1966, he was recalled for regular employment as roundhouse foreman. Scruggs was also called for temporary work in October, 1965, but did not report because of alleged illness. He has not subsequently made himself available for work.

The above is shown merely to point out the excessive nature of the claim and shows the lack of logic in the grievance. The claim is obviously based on the theory that the men should not have been furloughed. But even if this were so, it does not follow that the injury alleged to have occurred to each claimant is the amount they seek.

There is nothing in the agreement which prohibits the Carrier from reducing forces. The applicable rule merely says that five working days' notice "will be given the men affected before reduction is made", and does not prescribe the form, content or manner of giving notice. The Claimants have not contended that they were uninformed or misinformed as to the action to be taken. They were given notice of the reduction twice, both of which fulfilled the requirement of the applicable rule.

The claim is without merit, and it should be denied.

(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 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.

The issue involved herein is whether or not Carrier complied with Rule 27(b) as amended by Article III of the June 5, 1962 Agreement, when it bulletined the abolishment of various electrician positions without naming the men so affected and furnishing the list of names of the Claimants to the local Committee.

The facts are that Carrier made a force reduction of three electrician positions at Charlottesville, Virginia by bulletining the abolishment of six positions and concurrently adding three new positions.

The Organization's position is that Rule 27(b) as amended by Article III of the June 5, 1962 Agreement was violated when Carrier failed to list the names of Claimants on Bulletin No. 54 and failed to furnish a list of employes to be furloughed, including Claimants herein, to the local Committee.

The Carrier's contention is that Bulletin No. 54 was a proper notice given to Claimants in regard to the abolishment of their positions; that Rule 27(b), as amended, does not specify the form that the notification shall consist of, or that such notice be in writing.

Rule 27(b) provides as follows:

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

The above rule was amended to read "Five" days' notice be given in such a situation.

Bulletin No. 54 posted by Carrier in this instance and which involves the question as to whether it was proper notice as required by said Rule 27(b) reads as follows:

"Charlottesville, Virginia
September 3, 1965 mgg

BULLETIN NO. 54

Effective at regular starting time 7:00 A.M. Friday, September 10, 1965, the following electrician's positions will be abolished:

2nd Shift - Locomotive - Saturday through Wednesday
Coach Yard - Monday through Friday

Relief - 2nd Shift - 2 days Locomotive Thursday and Friday
2nd Shift - 2 days Coach Yard Saturday and Sunday
3rd Shift - 1 day Coach Yard Wednesday

3rd Shift - Coach Yard - Sunday through Thursday
Locomotive - Tuesday through Saturday

Relief - 3rd Shift - Locomotive Sunday and Monday,
Coach Yard Tuesday, Friday and Saturday.

C. A. Kraft,

cc: Mr. J. M. Ballard
Coach Yard Bulletin Board
Roundhouse Bulletin Board"

First, at the referee hearing held before this Board, both parties attempted to read from files, which were outside the record of this claim. Circular No. 1 setting forth the Rules of Procedure before this Board, states that the parties shall set forth in their original submission all relevant, argumentative facts, including all documentary evidence submitted in exhibit form. Therefore, this Board cannot consider any evidence or data that is not submitted in accordance with Circular No. 1.

In regard to the merits of the claim, we are of the opinion that Bulletin No. 54 did not comply with the provisions of Rule 27(b), as amended, of the Agreement, in that it did not inform Claimants as to their furlough date from service and a list of their names was not furnished the local Committee. The bulletin in question did not sufficiently inform Claimants of their furlough. While it is true that the rule does not specify the method of notice, nevertheless, the notice so given must impart notice of furlough in this instance directly to the individuals involved.

As was said in Award 3690 (Johnson):

"While it does not specify the method, it does specify the end result,—the employe must be informed. Its purpose is functional, not merely technical; it is to impart notice to the employe. . . ."

In this instance Carrier could have easily inserted the names of the Claimants and the effective date of their furlough on said Bulletin No. 54. If Carrier had done this, it would have complied with the provisions of said Rule in regard to "notice". See Award 1679. Further, Carrier failed to furnish a list of names of the Claimants to the local chairman as is specifically required by said rule.

In regard to damages, Claimants are each entitled to compensation for loss of five (5) days' pay.

AWARD

Claim sustained in accordance with this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1968.