



Award No. 5834
Docket No. 5675
2-CRI&P-CM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Carmen)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

- (1) That under the current Agreement Carmen H. C. Hansen, R. L. Mass, D. P. Jennings, L. A. Patten, L. L. Riddle, H. V. Hansen, R. B. Birding and E. Jabens were furloughed without proper notice and denied the right to work their regular assignments on July 16, 1967.
- (2) That accordingly the Carrier be ordered to compensate the above named claimants eight (8) hours pay each at the applicable straight time rate for July 16, 1967.

EMPLOYEES STATEMENT OF FACTS: At Council Bluffs, Iowa, the Chicago, Rock Island and Pacific Railroad Company hereinafter referred to as the carrier, maintains a Repair Track, Train Yard and Diesel House where employes are employed around the clock, seven days a week. On July 16, 1967 there were 17 carmen and 9 carmen helpers regularly assigned at Council Bluffs. All employees at Council Bluffs were furloughed on Sunday, July 16, 1967 beginning with the Second Shift.

The eight claimants were assigned and were furloughed as follows on July 16, 1967.

<u>Claimant</u>	<u>Shift</u>	<u>Rest Days</u>	<u>Time Notified</u>	<u>How</u>
H. C. Hansen	12 Mid. 8:00	Fri. & Sat.	2:30 P.M.	Telephone
R. L. Mas	8:00 A.M. 4:00	Sat. & Sun.	6:30 P.M.	Telephone
D. P. Jennings	8:00 to 4:00	Sat. & Sun.	9:00 P.M.	Telephone
L. A. Patten	4:00 12Mid.	Wed. & Thur.	3:30 P.M.	Telephone
L. L. Riddle	4:00 12Mid.	Sat. & Sun.	12:10 P.M.	Telephone
H. V. Hansen	4:00 12Mid.	Thur. & Fri.	3:25 P.M.	Came to work & was sent back home.
R. B. Birding	12:30 P.M.			Telephone
E. Jabens	4:50 P.M.			Telephone

vision Award 4918) and that an award of your Board which "alters, changes or amends a collective bargaining agreement is a usurpation of power" (Hunter v. A.T.U.S.F. Rwy., CCA 7, 171 Fed. 2d 594).

CONCLUSION

In conclusion, the carrier states that the claim of the organization is without support and should 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 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 July 16, 1967 a strike was called by the Machinist Craft against Carrier resulting in the latter furloughing the eight claimants involved in this dispute. The basis of the claim as submitted is that insufficient notice was given in violation of Article VI of the National Agreement of August 21, 1954, which reads as follows:

"Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed."

All employees were furloughed on Sunday, July 16, 1967, the day of the strike. The eight claimants were assigned and were furloughed as follows on July 16, 1967.

<u>Claimant</u>	<u>Shift</u>	<u>Rest-Days</u>	<u>Time Notified</u>	<u>How</u>
Hansen	12 Mid-800	Fri-Sat	2:30 PM	Telephone
Mass	8:00 A.M.-4:00	Sat-Sun	6:30 PM	Telephone
Jennings	8:00 AM-4:00	Sat-Sun	9:00 PM	Telephone
Patten	4:00-12:00 Mid.	Wed-Thur	3:30 PM	Telephone
Riddle	4:00-12:00 Mid.	Sat-Sun	12:10 PM	Telephone
Hansen	4:00-12:00 Mid.	Thur-Fri	3:25 PM	Came to work & sent home
Birding	4:00-12:00 Mid.	Sun-Mon	12:30 PM	Telephone
Jabens	8:00 AM-4:00 PM	Sat-Sun	4:50 PM	Telephone

The principal defense of the Carrier in this case is that, since they were not given advance notice of the strike, ergo, they were unable to comply with the 16 hour notice. This is no defense. The language of the National Agreement, quoted intra, is clear and precise. From the facts of record, we will sustain the claim as to all Claimants with the exception of Claimants Riddle and Bird-

ing, whom we find, did receive proper advance notice. Claim sustained consonant with the opinion as expressed.

A W A R D

Claim sustained consonant with opinion as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.