

Award No. 5994
Docket No. 5849
2-N&W-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Apprentice Carmen E. W. Dehart and J. E. Miller were improperly and without good cause, suspended and/or held out of service by Carrier from July 10 through July 21, 1967, in violation of Rules of Controlling Agreement, resulting in loss of ten (10) days' work to each of said employees.

2. That Carrier be ordered to compensate each of the above named employees in the amount of ten (10) eight (8) hour days at the applicable straight time rate of pay because of such loss and Rules violation.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company (formerly Virginian), hereinafter referred to as the carrier, maintains a shop and other facilities for the inspection and maintenance of cars at Elmore, West Virginia, a point on carrier's line. Apprentice Carmen J. E. Miller and E. W. Dehart, hereinafter referred to as claimants, were regularly employed at said Shop, with seniority dates of 11-15-65 and 2-21-66, respectively.

Effective with the close of business on Sunday, June 25, 1967, claimants were furloughed, along with eighteen (18) other employees, by Bulletin No. 74 (67), dated June 19, 1967., at same time and under same date Bulletin No. 75 (67), was issued, abolishing all jobs held by car department employees at Elmore, which included claimants as regular apprentices, effective 7:00 A. M., Monday, June 26, 1967, both of said Bulletins though differently worded, became effective at precisely the same time, which was 7:00 A. M., June 26, 1967.

On precisely the same date and time, carrier issued Bulletin No. 76 (67), which in the second paragraph thereof, stated in pertinent part as follows:

"On Monday, July 10, 1967 at 7:00 A. M., all employees, Elmore Car Department, will revert back to positions held prior to the

work the claim was limited to that date, which is the limitation put on the period for which compensation is asked as the claim is presented here. However, we think, because of the terms of Rule 28(c), the claim for compensation must be limited to five (5) days since that is the length of time within which carrier could properly have reduced its forces thereunder. See Award 1738 of this Division for a like holding."

Rule 28(c) referred to provided that five days' notice would be given on furlough notices. Rule 25, under which this claim was filed, states in pertinent part:

"(b) Except as provided in paragraph (h) of this Rule No. 25, when force is reduced, four (4) days notice will be given the men affected before reduction is made and list will be furnished the Local Committee."

Paragraph (h) in this rule concerns a sixteen-hour notice in the event of emergency, and is not an issue in this case.

Rule 25 was amended by Article III of the June 5, 1962 Agreement, which reads as follows:

"Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employees working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

Under date of May 24, 1950, a letter was written and designated as Interpretation "A" concerning Rule 25(b). In pertinent part, this letter states:

"In our conference it was agreed that if a particular calendar date is to be considered as a day of notice under these rules, the bulletin notice of reduction of force must be posted prior to the lunch period of the men affected."

Under the provisions of Rule 25(b), with its interpretation, and Article III of the June 5, 1962 Agreement, the men whose names appeared on Bulletin No. 75 (67), dated June 19, 1967, were properly furloughed. Claimants' names appear on this notice, and there was no necessity or requirement that they again be furloughed by bulletin before being recalled on July 24, 1967. Under the circumstances, the claim is without merit, and carrier respectfully asks a denial award by the Board.

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.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The central question to be determined in this dispute is whether Carrier was obligated to recall apprentices at the same time it recalled regularly assigned furloughed employees.

Claimants, apprentices, were temporarily furloughed along with regularly assigned employees by bulletin dated June 19, 1967, and effective June 26, 1967. A second bulletin of the same date was issued abolishing all jobs held by the Car Department at Elmore. By a third bulletin, also dated June 19, 1967, Carrier recalled all employees effective July 10, 1967. This furlough period coincided with the vacation period with coal mining operations which Carrier served.

On July 6, 1967, Claimant apprentices were notified that they would not return to work on July 10, 1967, but would remain in a furloughed status until further notice. Claimants were subsequently called and reported for work on July 24, 1967.

An apprentice job is neither advertised or abolished by bulletin under this Agreement. The recall bulletin concerned only employees whose positions were abolished. Clearly, therefore, the bulletin was not applicable to apprentices. Apprentices do not have the same seniority status as permanent employees and have no right to bid positions.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.