

**Award No. 6079**

**Docket No. 5886**

**2-IC-EW-'70**

**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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the Carrier violated the current agreement at Clinton, Illinois, by posting a sixteen (16) hour emergency furlough notice at 11:00 P. M., May 15, 1968, which did not list the names of the employees affected before the reduction of forces was made, the list of employees affected was not furnished to the Electrical Workers' Organization; in the restoration of the forces the list of employees to be restored to service was not furnished to the Electrical Workers' Organization, nor were the employees to be restored to service given a letter or telegram sent to the employees' last filed address.

2. That the Carrier be ordered to compensate Upgraded Electrician Helper Apprentice L. L. Swanzy for forty (40) hours at the pro rata rate for May 18, 19, 20, 21 and 24, 1968, the time lost due to Carrier's failure to notify him when the emergency was over and the shop resumed operations.

**EMPLOYEES' STATEMENT OF FACTS:** Upgraded Electrician Helper Apprentice L. L. Swanzy, hereinafter referred to as the claimant was employed by the Illinois Central Railroad Company, hereinafter referred to as the carrier, at its diesel shop in Clinton, Illinois.

On May 15, 1968, at Clinton, Illinois, there was an emergency at the carrier's diesel shop caused by a flood. That at 11:00 P. M. on this same date, carrier posted a sixteen (16) hour emergency furlough notice which stated in part:

"You will be notified as soon as conditions permit to resume operations."

This notice did not list the names of the employees affected. The notice was not furnished to the electrical workers' organization immediately.

**“\* \* \* Therefore, due to this being a shop shutdown due to an emergency and not a furlough referred to in Rule 28(a) \* \* \*”**  
(Emphasis ours.)

Clearly, if this were not a furlough referred to in rule 28(a), this rule cannot be controlling. The company submits that the agreement has not been violated, and requests that the board deny the claim.

If there has been any rule violation in this case, it is on the part of the claimant. Mr. Swanzy violated Rule 17 of the division superintendent's bulletin dated January 1, 1968 by securing a second job at the Gulf service station without the permission of his superior. The company submits that had the claimant complied with the rules and secured permission to hold another job, the company officials could have known where to locate the claimant when several attempts to telephone him at home resulted in failure. If there is any responsibility involved in this case, it is the claimant's.

**CONCLUSION:** The company has shown that there has been no violation of the agreement. The claimant, in effect, had never been furloughed. The claimant was off on his rest days on May 15 and 16; he performed work on the 17th; and he was offered an opportunity to work on the 18th. The company submits that had the claimant agreed to work on the 18th (as the rules require him to do), he would not have lost any time. It was the claimant's responsibility to comply with the request of his foreman. If the claimant felt that he was offered the wrong rate of pay for working on the 18th, he should have performed the work, and filed a grievance for the difference.

The union has not met its burden of proof, and has not supplied any evidence which could support a sustaining award.

**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 waived right of appearance at hearing thereon.

On May 15, 1968 flood conditions in the Clinton, Illinois area required an emergency shut-down of the Illinois Central's Diesel Shop. At 11.00 P. M. that evening, in compliance with Rule 28(b) of the Agreement, a 16 hour emergency furlough notice was posted advising all employees of the shut-down.

Claimant's regular rest days fell on May 15 and 16, 1968. In the evening of May 16, Foreman Bell called the claimant and asked him to work the following day on the 7:00 A. M. to 3:00 P. M. shift. Claimant complied with this request and worked this shift on the 17th. At the end of this shift, Foreman Bell asked the claimant to work on the 18th on the 7:00 A. M. to 3:00 P. M. shift. Claimant refused to do so unless he was paid overtime.

The remainder of the men in the shop were contacted on the 18th and all except claimant reported for work.

Carrier alleges that several telephone calls were made to Claimant's home to advise him to return to work on the same day as the other employees, but that they were unable to reach him.

The Organization alleges a violation of Rules 28 A and B of the contract. A careful analysis of their provisions convinces us that insofar as the factual situation of this case is concerned, Rule 28 A has no applicability and that 28 B is controlling. It is clear from the record that an emergency existed and in fact during the handling of this dispute on the property, the General Chairman recognized that Paragraph B rather than A was controlling. The General Chairman in a letter dated August 29, 1968, appealing the claim to Carriers' Director of Labor Relations, stated that what was involved was —

"A shop shut-down due to an emergency and not a furlough referred to in Rule 28 A."

Rule 28 (B) reads:

"(B) 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 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 employees involved in the force reductions no longer exists or cannot be performed."

This was an emergency and clearly Rule 28 B governs. Rule 28 A is the 5 days reduction in force notice required to be given by the Carrier before the reduction is made. It clearly does not cover emergency situations such as we have in the instant case. The Organization's arguments that letters and telegrams plus other written instruments should have been sent to claimant and to the General Chairman are not persuasive simply because there is no contractual requirement, nor indeed is there any evidence of past practice.

Carrier complied with the basic contract. We find no evidence in this record to sustain the position of the claimant. We will deny the claim.

#### **AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of SECOND DIVISION

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.

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