

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: ( System Federation No. 96, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( R. C. Haldeman, Trustee of the Property of  
( Lehigh Valley Railroad Company, Debtor

Dispute: Claim of Employees:

That the Carrier at Sayre, Pa. has initiated a recall from furlough notice that is not in accordance with the provisions of Rule 27 of the controlling agreement.

That accordingly the Carrier be ordered to discontinue such improper notices and adhere to the language as spelled out in Rule 27.

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.

Carrier notified a number of furloughed Carmen Helpers to return to work by letter dated March 12, 1973. That letter stated, in each case:

"Disregard our recall letter dated February 23, 1973. You are hereby recalled to return to work as a Carman Helper at Sayre Frt. Car Shop, effective April 2, 1973 subject to passing required physical examination.

If you do not respond as to your availability within ten (10) days from receipt of this letter, you will forfeit your seniority if any and be removed from the roster."

The dispute herein is based on Petitioner's contention that the letter above is violative of Rule 27. That rule, in pertinent part, provides:

"In restoration of forces, employes shall be restored to service in accordance with their seniority and must respond to call within ten (10) days after being notified at last known address by letter, registered U.S. Mail, and shall be returned to their former positions if possible. The local committee shall be furnished with a list of employes to be restored to service."

Petitioner argues that the clear language of Rule 27 requires, in this case, that April 2, 1973 is the date of notification and that employes must respond within ten days after that date. It is contended further that Rule 27 above contains no provision that an employe failing to report will lose his seniority.

Carrier argues that the language of the rule is quite clear and requires that an employes must "respond to call within ten days after being notified". Carrier states that an important distinction must be drawn between "responding" and "reporting for work". Carrier contends that it chose the method employed above with a view to insuring that there would be eight carmen available to work on April 2nd; thus sufficient time was allowed to enable Carrier to contact other furloughed employes in the event the first eight were not available.

It is noted that the Organization, in its submission, contrary to later argument, admitted that a furloughed employe would forfeit his seniority upon being restored to service and failing to report. Also, it is noted that Award 5163, a related dispute, cited by Carrier, deals with the issue of employes starting work immediately upon recall from furlough and thus must be distinguished from the instant dispute, including the dissent.

There is no monetary claim involved in this dispute and the issue before us is the language of the recall notice and the right of Carrier to require a response to such notice within ten days or impose the penalty of loss of seniority. Past practice was discussed but no information or documentation was submitted on the property (as evidenced by the record). The remedy requested in the Claim includes the request that Carrier be required to adhere to the language set forth in Rule 27 in recall notices. Both parties, citing a number of Awards, including Award 4130, agree that a labor agreement should be given a broad and liberal interpretation. It is clear that Rule 27, supra, does not mandate any particular language for the recall notice and it obviously has resulted in varied notices over the years. It is not within our province to spell out new, or indeed any, language for such notices: we also may not rewrite rules. Hence, within our jurisdiction we can only indicate that a reasonable interpretation of Rule 27, bearing in mind the purpose sought by Carrier, would not permit

the loss of seniority by a furloughed employe for failure to respond to a notice within any time period. The seniority loss would only obtain for failure to report in accordance with a proper notice. This is not intended to **estop** Carrier from seeking information as to availability of furloughed employes prior to recall dates; it merely restricts the seniority loss penalty for failure to report, as is apparently the intention of the Rule, as interpreted by both parties in the past.

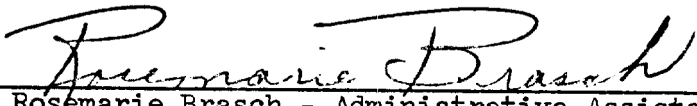
A W A R D

Claim sustained to the extent indicated above.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
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Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of July, 1975.