

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. At Clifton Forge, Virginia, on January 17, 1976, the Chesapeake & Ohio Railway Company erred when they recalled senior furloughed Electrician N. R. Nicely, in lieu of calling W. H. Layne off of the overtime board to work a position at the inspection pit.
2. That, accordingly, the Chesapeake & Ohio Railway Company be ordered to compensate Electrician W. H. Layne for eight (8) hours pay at the overtime rate for January 17, 1976.

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.

A serious derailment and bridge fire occurred at Sandstone, West Virginia. It resulted in a diversion of most of the rail traffic through Clifton Forge, Virginia, until the tracks and bridge involved were cleared and repaired. Carrier maintains a Locomotive Shop at Clifton Forge. Such change in the usual traffic pattern had an adverse effect on the terminal forces employed in said Locomotive Shop. Carrier invoked its right under the emergency furlough provision and, pursuant to Rule 27(g), suspended, in part, its operations at said Locomotive Shop. Carrier abolished, as per Bulletins No. 1 and No. 3, Friday, January 16, 1976, all positions on the second and third shifts in the Locomotive Department as well as specified positions in the Clifton Forge Shop. All positions at the inspection pit where some work remained were not abolished. One of the positions abolished however was that of Electrician C. E. Nicely who had been assigned to the third shift at said inspection pit Friday and Saturday and at the Diesel House the remainder of his work week.

Saturday, January 17, 1976, service requirement on the third shift at the inspection pits were such as to require the services of an electrical inspector. Carrier called and used senior furloughed Electrician N. R. Nicely therefor. After working said third shift Electrician Nicely was again furloughed.

The instant claim was submitted on behalf of Claimant Electrician W. H. Layne, who had not been furloughed. The Employees allege that Claimant should have been used on an overtime basis for the inspection pit work on January 17, 1976 rather than to use furloughed Electrician N. R. Nicely. The Employees contend that the conditions of emergency no longer existed on Saturday, January 17, 1976 to justify a suspension of work on the third shift at the inspection pit. Hence, absent that exigency the incumbent Electrician and his position would necessarily be restored. Therefore, in the absences of incumbent Electrician C. E. Nicely, the position if necessary to be filled should be filled under Rule 27 $\frac{1}{2}$. Thus, the work accrued to the overtime board and not by a recall of the senior furloughed Electrician.

Carrier argued that Employees never charged Carrier with any rule violation, nor was any rule cited which prohibited Carrier's action. Nothing, says Carrier, in Rule 27(g) prohibited Carrier from temporarily recalling senior furloughed Electrician Nicely and again furloughing him at the completion of the work called for. Mr. Nicely was the senior furloughed Electrician and was entitled under Rule 27 to be called. Rule 30 contemplated and provides for the required work and payment therefore during a shut down.

Rule 27(g) merely and only granted Carrier relief from the contractual requirement of giving an advance notice in connection with job abolishments but only when emergency conditions existed which warranted such necessary action. It has no other purpose expressed or implied. The employees furloughed thereby have no employment standing whatsoever except that as specifically provided in the labor Schedule Agreement. Here Rule 27(c), in pertinent part, provides:

"In the restoration of forces senior laid off employees will be recalled..."

Rule 27(F) also, in pertinent part, provides:

"When positions are abolished and subsequently restored within thirty (30) calendar days, the last regularly assigned incumbents must return to their positions unless..."

These two provisions provide the specific means by which the furloughed employee is recalled to an employment status. While Rule 27 $\frac{1}{2}$ "Furloughed Employees - Use Of", provides the means by which a furloughed employee

may, if he so desires, make himself available for extra work, the parties agreed that Rule 27 $\frac{1}{2}$ had no application in the instant case.

The record reflected that Carrier had, as per Bulletin No. 5, dated January 19, 1976, restored all positions abolished by Bulletins Nos. 1 and 3 on January 16, 1976, effective with the second and third shifts. Consequently, Bulletin No. 5 represented the only evidence of any abolished positions being restored since their January 16th abolishment and concurrently pronounced the end of the emergency period. In such circumstance, Carrier's defense of its recalling furloughed Electrician N. R. Nicely for one day on the basis that the crisis was over and furloughing him thereafter on the basis that the emergency still existed is held to be untenable. It represents no less than an euphemistic means for using furloughed employees at Carrier's will contrary to Rule 27.

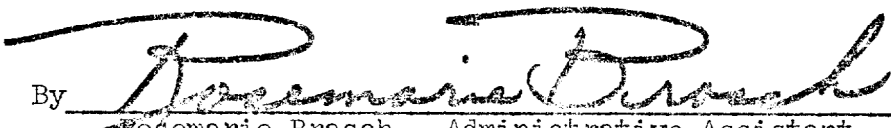
The instant claim will be sustained but only at pro rata rate as no overtime work was performed.

A W A R D

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated (at Chicago, Illinois, this 19th day of September, 1978.