

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10730
Docket No. 10434
2-C&NWT-CM-'86

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company violated the provisions of the current agreement, particularly Rule 25, when it failed to give a five (5) day notice abolishing twenty-one (21) Carmen positions on September 24, 1982 at the Carrier's South Pekin, Illinois repair facility.

2. That the Chicago and North Western Transportation Company violated Article V, Section 1(a) of the August 21, 1954 Agreement when the Manager of Labor Relations failed to specify the reasons for his denial of the claim.

3. That accordingly, the Chicago & North Western Transportation Company be ordered to compensate the below listed Claimants in the amount of eight (8) hours pay at straight time rate for the number of days listed.

Carmen Claimants	No. of Days Claimed	Dollar Amount
J. Byrd	5	\$491.20
E. Burke	5	\$491.20
M. Elliott	5	\$491.20
G. Bach	5	\$491.20
J. Wilkens	5	\$491.20
D. Settles	5	\$491.20
R. Stock	5	\$491.20
J. Vance	5	\$491.20
R. Axley	5	\$491.20
H. Carver	5	\$491.20
R. Jackson	5	\$491.20
D. Gravert	5	\$491.20
J. Depoy	5	\$491.20
R. Goodin	5	\$491.20
M. Larimore	5	\$491.20
K. Young	4	\$392.96
D. Clardy	4	\$392.96
R. Wilcox	4	\$392.96
R. Bacon	4	\$392.96
R. Wheeler	4	\$392.96
R. Dotson	2	\$196.48

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 employes 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 to hearing thereon.

This dispute arose out of the strike by Brotherhood of Locomotive Engineers, which lasted from September 19, 1982 until September 23, 1982. On September 24, 1982 the Carrier posted a bulletin abolishing the twenty-one Carmen positions at issue here; the abolishment was to be effective September 30, 1982. However, later in the day on September 24th the Carrier notified the affected Carmen that the abolishment was effective immediately, and that they should not report for work on the following day.

Initially the Carrier took the position that the abolishment of the Carmen positions at issue here was a direct result of the strike by the Locomotive Engineers, and therefore was covered by the Emergency Force Reduction Rule. That Rule permits the Carrier to ignore the usual Rules requiring advanced notice for lay-offs, but only when the force reduction is due to a suspension of a Carrier's business due to a labor dispute. The Organization took the position that the lay-offs were not a result of the strike and that therefore the normal Rule requiring five days notice applies.

The Carrier now acknowledges that Rule 25 controls, but disputes the way in which the Organization has computed the five days. The Board concurs with the Carrier that the five day period began on September 25th, one day after both oral and written notice was first given, and continued through September 29th, five days later. The Board also concurs with the Carrier's position that the Agreement does not require it to pay the Carmen for their regularly-scheduled rest days which fell within this five-day period. Although the Organization does not explain how it arrived at its figures, it appears that it tacitly agrees that rest days should not be paid, because it did not request a full five days' pay for all the Carmen affected. Furthermore, nothing in the contract requires the Carrier to do more than recompense the Claimants' for the wages they would have earned, had they received the required five days' notice, and been permitted to work through that period.

The Board finds no merit in the Claimants' second Claim, that the Carrier violated the contract by failing to specify reasons for its original denial of the Claim. The Board has reviewed the parties' correspondence regarding this Claim, and find that the Carrier consistently cited the Emergency Force Reduction Rule as its reason for not giving the five-day

notice. Although the Carrier subsequently decided not to rely upon that Rule, the Board finds no merit to the Organization's claim that the Carrier totally failed to specify its reasons for the denial. Furthermore, since the Board has basically found for the Brotherhood on the merits of the five-day notice question, this second Claim regarding the procedural handling of the Claim becomes moot.

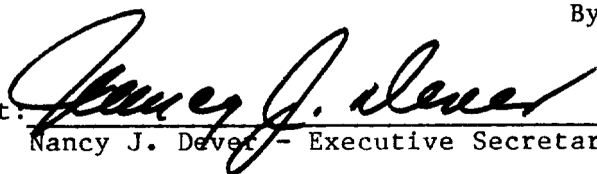
Accordingly, the second Claim is denied, the first Claim is granted, and the third Claim is granted in part. Not having any evidence to the contrary the Board must rely upon the Carrier's list regarding the days actually worked by the Claimants during the five-day period from September 25 through September 29, 1982. The number of days actually worked by each Claimant should be multiplied by \$98.24 (8 hours per day (\$12.28 per hour). The resulting figure is the amount due to each Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.