

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10731
Docket No. 10495
2-C&NW-CM-'86

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

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

Dispute: Claim of Employees:

1. Chicago and North Western Transportation Company, hereafter referred to as the Carrier, violated the provisions of the current agreement when it failed to recall thirteen (13) Carmen following strike by Brotherhood of Locomotive Engineers, ending September 23, 1982, and failed to afford them with five (5) days advance notice as provided for in Rule 35.

2. That accordingly, the Carrier be ordered to compensate the below listed Claimants in the amount of eight (8) hours' pay per day at Carmen's rate for each day claimed.

<u>Carmen Claimant</u>	<u>Date</u>
N. Graham	September 23, 26, 27, 28, 29, 1982
G. Klaas	September 23, 24, 25, 26, 27, 1982
O. G. Gerstner, Jr.	September 23, 24, 27, 28, 29, 1982
A. Molinar	September 23, 24, 25, 28, 29, 1982
A. Martin	September 23, 26, 27, 28, 29, 1982
G. Townzen	September 23, 24, 25, 26, 27, 1982
G. Waxylak	September 25, 26, 27, 28, 29, 1982
T. J. Shelby	September 25, 26, 27, 28, 29, 1982
H. Reeves	September 25, 26, 27, 28, 29, 1982
W. Dickson	September 24, 25, 26, 27, 28, 1982
L. Shores	September 23, 24, 25, 26, 29, 1982
D. Saltzman	September 23, 24, 25, 26, 29, 1982
F. Wiegard	September 23, 24, 25, 26, 27, 1982

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 at hearing thereon.

This is another dispute arising from the strike by the Brotherhood of Locomotive Engineers, which lasted from September 19 through approximately 7:00 P.M. on September 23, 1982. The instant dispute concerns the abolishment of thirteen Carmen positions at the Carrier's Madison, Illinois location.

The Carrier contends that notice of the abolishment of the Carmen positions was first given by a bulletin dated September 22. Because this bulletin is dated while the strike was still ongoing, the Carrier contends that these abolishments come under the Emergency Force Reduction Rule, which dispels the usual requirement of advance notice before a lay off.

The Organization contends, however, that the bulletin dated September 22 was not in fact posted until September 24th, after the strike had ended, and that therefore the normal Rule 25 controls and mandates five days' notice.

In its submission the Carrier apparently drops its reliance on the Emergency Force Reduction Rule because of the controversy regarding the posting date and concedes that Rule 25 applies. The Carrier argues, however, that verbal notice given to the Claimants on the evening of September 23rd started the five-day period running, and it ended on September 27th.

The Organization apparently concedes the Carrier's right to furlough its employees, and argues that the crux of its claim is the Carrier's failure to provide a five-day notice of force reduction. The Organization apparently does not take issue with the oral form of the notice received by the Claimants, since it begins counting the five-day period on September 23rd, at least for most of the Claimants. The Organization does not argue or present any evidence that any of the Claimants did not receive the oral notice on September 23rd.

Therefore, the only dispute remaining between the parties is the determination of the exact period of the five-day notice which should have been provided to the Claimants. In accordance with this same Carrier's position, and our decision in Award 10730, the Board holds that the five day period began on September 24, 1982, one day after the Claimant's received oral notice, late in the day on September 23rd. The period should have run through September 28, 1982. The Claimants should not receive pay for regularly scheduled rest days which fell within this period, however, because Rule 25 requires only "five days notice," not five regularly-scheduled work days' notice. (See Board decision in Award 10730.)

Accordingly, the Board grants the part of Claim Two which claims wages for the affected Carmen for the period of September 24 through September 28, inclusive, not counting regularly-scheduled rest days. The Board denies the part of Claim One that states that the Carrier violated the Agreement when it failed to recall the Carmen, because the Organization itself concedes that the Carrier may furlough its employees, as long as it meets the five-day requirement of notice. The Board grants the part of Claim One that states that the Carrier violated the contract when it failed to afford the Claimants with five days' notice.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Devel - Executive Secretary

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