

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. That the service rights of Carmen William Rowe and Michael Davis and Carmen Helpers Rick French, James Quick, Basil Spence, Jr., and Terry Bias and Rule 27 of the Shop Crafts Agreement were violated account said employees were not given proper notice when furloughed on October 1, 1984.

2. Accordingly, Claimants are entitled to be compensated at pro rata rate as follows in lieu of the violation: W. A. Rowe, 32 hours; M. R. Davis, 36 hours; R. L. French, 32 hours, J. B. Quick, 40 hours, B. Spence, 32 hours and T. Bias, 40 hours.

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.

Claimants were employed as carmen and carmen helpers by Carrier at its Peach Creek, West Virginia, facility. On October 1, 1984, Carrier posted a notice that employee furloughs, including Claimants, were to begin as of 7:00 A.M. on October 8, 1984. Because of later reports of coal mine strikes, Carrier subsequently invoked the furlough rule's emergency provision, and Claimants were notified that they were furloughed as of the end of their shift that day. The Organization thereafter filed a claim on Claimants' behalf, asserting that Claimants had not received proper notice of the furlough.

This Board has reviewed the evidence in this case, and we find that the Carrier did not meet its burden, which was to prove that there was an emergency condition which enabled the Carrier to avoid giving the Claimants the required five (5) day notice prior to putting them on furlough. Although there is some evidence of coal mine strikes, there is insufficient evidence to support the nexus between those strikes and the emergency conditions which the Carrier contends enables it to avoid the clear requirements of Rule 27(b). In other words, there is no probative evidence which indicates that the alleged emergency conditions existed at the time of the Claimants' furlough.

As this Board has stated in several previous Awards, the burden of proof is on the Carrier to show that the emergency conditions would have prevented it from complying with the five (5) day notice requirements. (See Second Division Awards 7327, 10135, and 10730.) This Carrier has not met its burden, and thus the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1988.