

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Chicago, Missouri & Western Railway Company)

STATEMENT OF CLAIM:

1. That the Chicago, Missouri & Western Railway violated the terms of our Agreement, particularly Rule 22, when they failed to provide a five day notice prior to placing Carman Barry Crenshaw in furlough status. The Carrier also violated Rule 34 of the Agreement by failing to deny this claim in a timely manner.

2. That accordingly, the Chicago, Missouri & Western Railway be ordered to compensate Carman Barry Crenshaw two days pay (16 hours) for failing to provide the five day notice required by the Agreement and five thousand dollars (\$5,000) punitive damages for their blatant disregard for the language of the Agreement.

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.

The genesis of this dispute resides in the economic conditions associated with the business climate during the time period under consideration. The Carrier became a railroad in April 1987, and commenced operation over tracks in Illinois and Missouri purchased from the Illinois Central Gulf Railroad. The projected business did not develop and after operating at a deficit for some time, the Carrier was forced to seek protection under Chapter 11 of the Bankruptcy Code in April 1988. Its efforts to curtail expenses resulted in substantial lay-offs for all classes of employees. The reduction in Carmen ranks was particularly contentious at the East St. Louis Yards. This situation was further aggravated in April 1989, by the withdrawal of business from that yard by its largest customer. These conditions prompted a flurry of claims. It is from this background that the misunderstandings associated with the present Claim arose.

Each party to this dispute claims as a defense that Rule 34 was violated. Rule 34 deals with the timeliness of filing claims and appeals. It is not necessary to review all the evidence in the record in order to determine the validity of such claims. In view of the turmoil on the property associated with the bankruptcy, reorganization, furloughs, and attendant disruptions, it is understandable that misunderstandings would arise. Since neither party has clear hands with respect to their positions on the Rule, and the record is vague in some respects, we cannot determine that either party's position is justified. However, the parties eventually agreed to certain extensions of time limits for the purpose of filing before this Board. In view of the foregoing we determine that Rule 34 does not serve as a bar to disposition of the Claim by this Board.

The record reveals that Claimant, due to a previous reduction in force, had been furloughed for some time. He declined an opportunity to transfer to another location to which his seniority entitled him; and in accordance with his contractual rights, assumed a furlough status.


In early June 1989, a Carman in Springfield took vacation leave. In accordance with the requirements of the Agreement, Claimant was offered the opportunity to fill the vacation position, which he accepted, and commenced work on June 12, 1989. The holder of the position he assumed was given another temporary assignment, and Claimant assumed that short vacancy. At the termination of that short vacancy, he was returned to furlough status, at the end of his last working day, August 18, 1989. There was no reduction in force and Claimant's job was not abolished; it was simply assumed by the individual who held the job Claimant filled during his absence. The five day Rule for abolishing jobs was not applicable. Based on the foregoing and the entire record, we find that the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1992.