Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12633
Docket No. 12262
94-2-91-2-60

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'Carrier') violated the provisions of Rule 27 of the Shop crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and Article II of the April 24, 1970 Agreement and the service rights of Carman G. Edwards (hereinafter 'claimant') when the carrier failed to give the claimant a proper five (5) working day notice prior to furloughing the claimant.

2. That accordingly, the claimant is entitled to be compensated for five (5) days pay, eight (8) hours each at the applicable carman's rate for the carrier's violation of the aforementioned Agreement Rule, beginning July 19, 1989 through July 26, 1989."

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.

On June 22, 1989, Carrier issued Bulletin No. 4 at its Newport News, Virginia, facility advising that 23 positions were being abolished on June 24, 1989, due to emergency conditions brought on by a coal miners' strike. Claimant was one of the employees furloughed as a result.

On July 11, 1989, Carrier issued Bulletin No. 6 advising that an additional seven positions were being abolished on July 13, 1989, due to emergency conditions brought on by this same coal miners' strike.

Carrier contends that as the miners' strike continued, it directly affected the Newport News coal unloading terminal by drastically reducing the volume of shipments. Accordingly, Carrier issued Bulletin No. 7 on July 19, 1989, advising the employees who had been furloughed temporarily under the emergency conditions Rule that they were being furloughed permanently in accordance with Rule 27. Those employees, including the Claimant, who had already been furloughed temporarily and who were subsequently furloughed under Rule 27, remained in furlough status until business at Carrier's facility returned to a level which, in Carriers view, justified their being recalled to service.

The Organization argues that Carrier improperly invoked the emergency conditions Rule and instead should have complied with Rule 27 of the Shop Crafts Agreement and Article II of the April 24, 1970 Agreement which require five days notice before a lay-off. The Organization's position is that Bulletin No. 7, dated July 19, 1989, was improper because the coal miners' strike officially ended on July 17, 1989 and, therefore, the emergency conditions upon which Carrier predicated its furlough notice no longer existed.

There are two difficulties with the Organization's contentions. First, it is well established that the emergency conditions which precipitated the layoffs may extend beyond the date when a strike officially ends. As noted by the Board in Second Division Award 10732:

> "...The Organization has not pointed to any language in the Emergency Force Reduction Rule, or anywhere else in the contract, which specifically requires the Carrier, at the moment a strike ends, to recall all employes furloughed during the strike. The stroke of the pen ending the strike does not end the state of emergency created by the strike;

normally it takes some time to restore service to its full pre-strike strength. (Second Division Award No. 6412)."

Second, the Board has already been presented with precisely the same scenario as in the instant case and has rejected the Organization's claim that five days notice is required for employees already on furlough. In Second Division Award 6673 Claimants had been furloughed as a result of strikes by coal miners and dock workers. The strikes ended, but claimants were not recalled. Instead, two weeks later, claimants were notified that their temporary furloughs would be changed to permanent furloughs. In denying the claim, the Board cited the line of cases beginning with Second Division Award 6412, which hold that advance notice of furlough to employees already on furlough is not required under any Rule. We find that the principle expressed in Award 6412 and reiterated in Award 6673 is controlling. There is no Rule support for the position that employees on temporary furlough must be brought back to work so that Carrier may conform to the notice requirements for permanent furlough. Accordingly, we must rule to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.