

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)
NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—That furloughed employes (2 car inspectors & repairmen and 2 oilers), who were called to work at Rensselaer on January 11, 1932, and being worked the one day only, are entitled to three days' additional pay each, on account of not receiving four days' notice before being furloughed, as provided in Rule 27 of the shop crafts' agreement between the New York Central Railroad and System Federation #103, Railway Employees' Department, American Federation of Labor.

POSITION OF EMPLOYEES.—On December 5, 1931, after four days' notice had been given as per Rule 27 of the New York Central agreement, the entire car inspection force at Rensselaer, New York, was furloughed.

On January 10, 1932, four men (Warrington, Burns, Byer, and Cusick) were recalled to service to begin at 12:00 o'clock midnight and to work until 8:00 A. M., January 11, 1932, a total of eight hours each. That the carrier was required under the terms of Rule 27 to give four days' written notice of reduction of forces after recalling the above men to work. That the men should be paid the difference between what they received and the amount they would have earned had Rule 27 been complied with and four days' notice given before they were furloughed. That the failure to apply Rule 27 would lead to abuses and would open the door to sharp practice on the part of carriers.

POSITION OF CARRIER.—That, when this dispute was referred to the joint New York Central shop crafts' committee, the question submitted for decision was—"Are these men entitled to pay on the basis of time and one-half" under the provisions of Rule 7? That Rule 7 does not apply to this situation.

That the claim of violation of Rule 27 and pay for time lost because of failure to comply with same is here asserted for the first time.

That Rule 27 was not violated.

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.

The parties to said dispute were given due notice of hearing thereon.

FURTHER FINDINGS.—Rule 27 reads as follows:

"RULE 27, REDUCTION OF FORCES

"When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force. When the force is reduced, seniority as per Rule 31 will govern, the men affected to take the rate of the job to which they are assigned.

"Forty-eight (48) hours' notice will be given before hours are reduced. If the force is to be reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the Local Committee.

"In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible, regular hours to be re-established prior to any additional increase in force.

"The Local Committee will be furnished a list of men to be restored to service. In the reduction of the force the ratio of apprentices shall be maintained."

This calls for a construction of the meaning of certain language used in the rule. The language is cumbersome. The intention of the parties could have been made clear by the use of a few simple words. The men whose claims are here presented were furloughed on December 5, 1931. At that time proper notice was given under Rule 27 and lists were furnished the local committee. On January 10, 1932, Car Inspectors and Repairmen P. D. Warrington and J. E. Burns, and Oilers F. Byer and J. Cusick, were called to report for work. These men worked from 12:00 midnight, January 10, to 8:00 A. M., January 11. They were advised that their work was not to continue beyond that time. The question for decision is—what does "restoration of forces" mean as used in paragraph three of Rule 27?

In considering the meaning of the term used and the intention of the parties, we note that paragraph two of the said Rule provides that lists will be furnished the local committee before reduction is made.

Paragraph three of the above Rule, which provides for "restoration of forces", says:

"* * * regular hours to be re-established prior to any additional increase in force."

Paragraph four provides that:

"The Local Committee will be furnished a list of men to be restored to service."

Weight should be given to the language above quoted, in an attempt to determine what the parties intended by the use of the term "restoration of forces" employed in this rule.

In view of the language here quoted, and giving a fair construction to the meaning of the words used and to the intention of the parties, this Division finds that the employment of the four men furloughed for a period of eight hours did not constitute a "restoration of forces" within the meaning of this Rule and that, therefore, the carrier was not required to give four days' notice and to furnish lists to the local committee before "the force is to be reduced." The carrier and System Federation #103 can, by a change in the language of Rule 27, clarify their intention respecting the meaning of the term "restoration of forces." We find that the Rule as written does not permit a construction that would entitle these men to four days' notice on the ground that the calling back of the four furloughed men, under the circumstances of this case, was a "restoration of forces."

CONCLUSION OF THE DIVISION.—It is not believed that placing the construction on Rule 27 will lead to any abuses such as are suggested, or to any sharp practices on the part of employers. Fair dealing between employer and employe and mutual regard for their respective rights is so essential to the protection of the interest of both parties, that we are obliged to conclude that no sharp practices will follow.

It is not intended by this decision to disturb any construction, interpretation, or agreement now in force and effect respecting Rule 27 and its application. This award is designed to dispose only of the instant case and not to serve as an interpretation of Rule 27. We are deciding at this time nothing but the question as to whether these men were entitled under the circumstances to the relief requested.

AWARD

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 13th day of February, 1936.