Award No. 21
Docket No. 13
2-NYC-CM-'36

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 EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES.—That four furloughed inspectors and repairers who were called to augment the inspection force at Utica Passenger Station on June 30 and July 1, 1933, are entitled to two days' additional pay, and the three furloughed inspectors and repairers called on July 8, 1933, for the same reason, are entitled to three days' additional pay, 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 Employes' Department, American Federation of Labor.

FACTS.—On June 30, 1933, J. R. Williams, H. Reed, D. DeGeorge, and J. J. Haley, furloughed car inspectors and car repairers, were called to report for work at 8:00 P. M., at the Utica Passenger Station on the line of the carrier. While on duty these men were notified to report the next day, July 1, to work from 6:00 P. M., on that date, to 2:00 A. M., July 2, 1933. On July 8, 1933, H. Reed, D. DeGeorge, and J. J. Haley, were called to report for work from 9:00 P. M., on that date, to 5:00 A. M., on July 9, 1933. All of these men were furloughed and were not called to fill vacancies due to absence from duty of regularly assigned men. These men worked eight hours per day and were paid straight time at pro rata rate.

The four men called on June 30 ask for two days' additional pay, and the three men called on July 8 ask for three days' additional pay, because of a claim violation of Rule 27, of the shop crafts' agreement.

POSITION OF EMPLOYES.—The men working on the hours hereinbefore specified were an addition to, and, therefore, an increase above the number employed as a regular force at Utica, in the passenger inspection service. These men after having been called into service, and therefore effecting an increase in force at Utica, were laid off without being given the four days' notice required by Rule 27, "before force is to be reduced."

Attention is called to the agreement entered into between representatives of the carrier and the Brotherhood Railway Carmen of America, on July 10, which provides for the calling in of furloughed carmen, carmen helpers, and coach cleaners, and the fact that in this agreement, Rule 27 was specifically waived by both parties. Contention is made that the men involved should be paid the difference between what they received and the amount they would have earned had Rule 27 been complied with and the four days' notice had been given before they were furloughed.

POSITION OF THE CARRIER.—Carrier calls attention to the fact that when the dispute was referred to the joint New York Central crafts' committee, the question submitted was, should the men be compensated at regular time rates or at premium overtime rates. It is contended that Rule 7 does not apply. It is further contended that Rule 27 does not apply and that the pay for time lost because of the failure to comply with the four days' notice provision of Rule 27 is here asserted for the first time. It is contended 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 above quoted rule. The language is cumbersome. It could have been made clear by the use of a few simple words.

The question for decision by this Division is what does "restoration of forces" mean as used in paragraph 3, of Rule 27, when applied to the facts in this case.

In considering the meaning of the term used and the intention of the parties, we note that paragraph 2, of the said rule, provides that lists will be furnished the local committee before reduction is made.

Paragraph 3, 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 4 provides that—

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

Weight must 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 men furloughed, under the circumstances herein outlined, did not constitute a "restoration of forces" within the meaning of Rule 27, and that therefore, the carrier was not required to give "four days' notice."

The carrier and System Federation No. 103 can, by agreement and a simple change in the language of Rule 27, make plain its meaning and clarify their intention.

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 men here in question was a restoration of forces within the meaning of the Rule.

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 practice will follow.

It is not intended by this Division 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.