

Award No. 183

Docket No. 198

2-DL&W-FT-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Federated Trades)**

**DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Rule 22 of the motive power and equipment department agreement was violated when the Scranton locomotive shops, the Keyser Valley, and the Kingsland car program shops were closed the fourth week of February, 1937. That employes affected be compensated for time lost.

POSITION OF EMPLOYEES:

EMPLOYEES' STATEMENT OF FACTS: Bulletins were posted in the Scranton locomotive shops, the Keyser Valley and Kingsland car program shops, January 25 and February 15, 1937.

That shops were closed the fourth week of February, 1937, and employes were laid off.

POSITION OF EMPLOYEES: We contend that Rule 22, reading in part:

"When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) hours per week before reducing the force, (except at Locomotive Back Shops and Car Program Shops, the hours may be further reduced by agreement with the General Committee of employes). When the force is reduced, seniority as per Rule 26 will govern, the men affected to take the rate of the job to which they are assigned.

Twenty-four (24) hours notice will be given before hours are reduced. If the force is to be reduced, four (4) days' notice will be given the men affected before reduction is made, and lists will be furnished the Local Committee."

clearly defines the method of reducing expenses, and covers the furloughing of the employes concerned.

In October, 1936, the committee requested the management to comply with Rule 22 in establishing a minimum work-week of nothing less than forty (40) hours per week, at the locomotive back shops and car program shops, as shown by Exhibits A, B, C, and D.

Prior to the above mentioned date it was the policy of the management to operate the back shops and car program shops, two, three, four, and five days per week, also close the shops down for one, two, or three weeks at a time, while working this short time. This is proven by Exhibit C.

railroad company closed its shops on seven occasions, and each time it followed exactly the same procedure that was followed in the present case. Likewise, prior to November 1, 1935, and while the former Rule 16, hereinbefore quoted was in effect, the shops were closed on several occasions, and each time the same procedure was followed as in the present case. At no time prior to the filing of the present claim has any protest or objection been made by the employes or their representatives that the railroad company was not entitled to close the shops, or that the procedure followed in closing them did not conform to the requirements of the existing rule. In this way Rule 22 has been given a practical construction by both parties which should be controlling on this Board. And if there has been any violation of Rule 22 in the present case, which we are unable to discover, the employes and their representatives by their acquiescence in the procedure followed over a long period of time in connection with similar closings, are in law and equity estopped from asserting such violation now as a basis for a claim for compensation for the entire force during the period it was laid off.

It is submitted, therefore, that the railroad company was entirely within its rights in closing the shops for the week of February 22nd, and that in closing them it fully complied with Rule 22.

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.

The rule involved in the instant case is quoted below in its entirety:

"Rule 22. When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force, (except at Locomotive Back Shops and Car Program Shops, the hours may be further reduced by agreement with the General Committee of employes). When the force is reduced, seniority as per Rule 26 will govern, the men affected to take the rate of the job to which they are assigned.

Twenty-four (24) hours' notice will be given before hours are reduced. If the force is to be reduced, four (4) 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 positions 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.

EXCEPTION: It is agreed that at certain outlying points in the Scranton District where it is found impossible to give the advance notice, stated in paragraph No. 2 of this Rule, account of unexpected mine shutdowns, notice for reduction in such instances will be given employes affected some time prior to the expiration of their shift on the previous day. Such points covered by this exception to be mutually agreed upon by Management and General Committee of Employes."

The employes contend that this rule "clearly defines the method of reducing expenses, etc." However, it is evident, not only because of the dispute in this case, but also because of similar disputes brought before this Division, that there is lack of understanding as to the correct application of Reduction in Force rules.

For these reasons, the Second Division feels it necessary, for the guidance of all concerned, to elaborate on what it regards to be the proper application of this kind of rule in order to eliminate misunderstanding.

When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before the force is reduced. This should be sufficiently explanatory and should require no elaboration.

However, there is an exception to the above as shown in this particular agreement, namely, that the hours may be further reduced by agreement with the general committee of employes; which means, that the representatives of both parties may agree that the hours per week may be reduced to less than forty (40).

Before the hours per week are reduced, twenty-four (24) hours advance notice will be given; this is ordinarily done by posting a notice, and a reasonable application of this portion of the rule means that notice should be conspicuously posted.

When it is decided that a force reduction is necessary, four (4) days' notice must be given the men affected before reduction is made, and lists furnished the local committee. Obviously this means that the four (4) days' notice must be given (which is ordinarily done by posting notice conspicuously), whether it be a reduction of anywhere from the smallest number of men to be laid off to the greatest number, or the entire force. Lists to be furnished the local committee can only mean that the committee must be informed of the names and classes of employes to be furloughed. The rule provides further that when the force is reduced, seniority will govern, meaning that the junior men are to be furloughed and the senior men retained in the service. There being two parties to the contract or agreement, the purpose of furnishing lists is to enable the committee to determine whether the seniority rule is followed.

Controversy has arisen in the instant case, also in somewhat similar conditions on other railroad properties, about the practice of carriers "closing down shops." The rule herein involved does not refer specifically to the closure of a shop. However, when in order to reduce expenses and the force is reduced, this may mean a reduction in force of ten, forty, eighty or one hundred per cent, and even though the entire force is furloughed, the provisions of the rule should be complied with, which states that four (4) days' advance notice will be given, seniority to govern and lists furnished the committee.

It is inconsistent with the provisions of Rule 22 to serve notice that a shop is to be "closed down" while retaining in service any number of employes as, obviously, it is a reduction in force so long as any employes are retained for service in the shop.

By the posting of a notice that the shops will be closed, the carrier alleged that it had fulfilled the requirements. However, the rules provide for the manner in which the reduction of expenses will be met, and when force reduction is made, the men may be laid off, either all or part, but regardless of the number of men affected, the four days' notice must be given and the list furnished the committee.

In this case, as in many others, much if not all of the controversy could be eliminated through closer co-ordination of the officers and the committeemen. When matters affecting the welfare of the employes are properly discussed, much misunderstanding can be eliminated.

The conditions and circumstances surrounding the instant case were such that this Division is unable to determine that any compensatory allowance is justifiable.

AWARD

The rule involved shall be applied in accordance with the aforesaid findings. Claim for compensation dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1937.