

Award No. 439

Docket No. 377

2-DL&W-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That Mark Schubert, furloughed car inspector, Dover, N. J., who was called to work at Port Morris, N. J., on January 2, 7, 14, 21, 25 and February 2, 4, 8, 11, 1938, and worked one, two and three days only, is entitled to compensation at punitive rate for Sunday, January 2, and Sunday, February 6, also three days' additional pay on account of not receiving four days' notice before being furloughed, as provided in Rule 22 of the motive power and equipment department agreement between The Delaware, Lackawanna and Western Railroad Company and System Federation No. 78, Railway Employees' Department, American Federation of Labor, effective date November 1, 1935.

EMPLOYES' STATEMENT OF FACTS: That Mark Schubert, car inspector at Dover, N. J., with a seniority date of February 24, 1936, was furloughed on August 7, 1937, growing out of being displaced by senior Car Inspector Alfred Marciano. That he (Mark Schubert) was restored to service at Port Morris, N. J., on Sunday, January 2, 1938, and furloughed on completion of the day's work; he was again restored to service on January 7 and 14, and furloughed upon completion of each day's work; he was restored to service on January 21, and worked two days and was furloughed upon completion of day's work on January 22; he was restored to service on January 25, and worked three days and was furloughed upon completion of day's work, January 27; he was restored to service on February 2, and furloughed upon completion of day's work the same day; he was restored to service on February 4, and worked three days and upon completion of day's work was furloughed on Sunday, February 6; restored to service February 8, and furloughed the same day; restored to service February 11, worked two days and furloughed on February 12.

"OVERTIME—SUNDAY AND HOLIDAY WORK

Rule 3. All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays and the following legal holidays,—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday),

increased or reduced, and, therefore, it was not necessary under these circumstances to give Schubert four days' notice before he could be laid off. Such notice as provided in paragraph 2 of Rule 22 is required only when the force is reduced.

The facts in this case are similar to those in the cases decided by this Board, Second Division, in Awards 20 and 21, wherein this Rule 22 (Rule 27 in those cases) was considered. In those cases it was held that under the circumstances there was no "restoration of forces."

In this case there never had been any reduction in forces at Port Morris, N. J., and certainly it cannot be said that there was an increase in forces when at no time on any of the days when Schubert worked was there more than the regular force engaged (namely ten men) and on each of the days during the period when said Schubert did work, he took the place of a regular employe who had voluntarily laid off for the sole purpose of permitting Schubert to work and earn something in order to assist him to maintain himself and family.

We submit, under the circumstances above stated, that this claim should be denied.

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 waived right of appearance at hearing thereon.

AWARD

Claim denied without prejudice to the rules invoked in the submission of this dispute.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1940.