Award No. 477
Docket No. 387
2-MC-MA-'40

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18 (MACHINISTS)

INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT LODGE 42

MAINE CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Claim of Messrs. Bisson, Emery, Desveaux and Breton, who worked in Waterville shop 6:00 A. M. to 2:00 P. M., June 20, 1938, and Messrs. Derocher, Colford, Butler and Boulette, who worked in Waterville shop 6:00 A. M. to 3:30 P. M., June 22, 1938, for three (3) days' pay at straight time for each man involved, because of not receiving seventy-two (72) hours' notice prior to being furloughed under the provisions of Rule 19.

JOINT STATEMENT OF FACTS: In June, 1938, Waterville shop was working with reduced forces, the customary and proper notices having been given in conformity with the provisions of Rule 19.

During the period the forces were reduced, locomotive 628 developed a cut booster trailer journal requiring wheel change, June 20 and 22, 1938.

The individuals here involved were furloughed men and were called in the order of their seniority.

The first group, called on June 20, worked as noted in the claim from 6:00 A. M. to 2:00 P. M., completed the job, and paid straight time.

The same locomotive again developed trouble with booster trailer journal, before being placed in service, making it necessary to again change the wheels, which was done on June 22.

The second group, called on June 22, worked from 6:00 A. M. to 3:30 P. M., and were paid straight time for the first eight (8) hours and overtime thereafter.

There is no dispute as to these payments.

The employes presented claim for three (3) days' pay for each man involved, claiming that seventy-two (72) hours' notice was not given the men. Claim was declined by the carrier .

There is an agreement between the parties of which Rule 19 provides in part:

From the above, it will be noted that the cases are identical and the requirements of the rules substantially, if not identically, the same.

It is respectfully suggested that your Board so find and decline the claim.

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.

These findings and opinions apply to the following dockets:

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Although the facts differ, and the rules to some extent, the material question involved is common to each of the cases. That question is whether when the management calls in furloughed men to perform some particular piece of work it is required to give them the notice applicable to reduction in forces.

In Docket 387, reduction in force is covered by Maine Central agreement Rule 19, which provides for 72 hours' notice. In Docket 436, Rock Island Agreement Rule 26, covering the same subject, 48 hours' notice is required. In Docket 449, Southern Pacific agreement Rule 29 (d), 5 days' notice is required with certain exceptions.

In each instance the furloughed men were called for a particular piece of work denominated emergency work. The schedules make no distinction with respect to emergencies nor are they limited to any definite length of time of the service to be required to bring them within the application of the rule covering restoration of forces. The restoration of force rule provides in substance that when it becomes necessary to increase forces, furloughed men will be called in the order of their seniority.

The exception referred to in the Southern Pacific agreement is that the notice requirement will not be applicable to employes filling vacancies of regularly assigned men. Such facts are not involved in any of these cases.

It appears that when the furloughed men involved in these cases were recalled for the work here involved, for the brief periods involved, and whatever the emergencies, in the absence of special agreement, the notice requirement becomes applicable to them.

The question has been before the Board in various forms previously. In Awards 20 and 21 the Division interpreting a New York Central rule held counter to this contention. The award, however, was definitely limited to the particular case involved. The question was again up in the cases covered by Awards 190, 252, 363, 372 and 451. Particular circumstances were involved in each of these cases. None of them, therefore, can be said to be squarely controlling on the point.

There is no authority in the schedule which authorizes the recall of furloughed men and treating them as though they were extra men called for a particular piece of work. The carrier is, of course, under no compulsion to recall furloughed men; it can use the regular men although perhaps at the cost of overtime. To sustain the carriers' positions would be in substance to hold that it can treat furloughed men as though they were an extra list

callable at straight time, thus avoiding payment of overtime to regular forces and at the same time excepting the application of the notice rule so far as they are concerned.

We conclude that the rules involved require the notices asserted and the claims will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this tenth day of July, 1940.