Award No. 478
Docket No. 436
2-CRI&P-CRI&G-CM-'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. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

CHICAGO, ROCK ISLAND AND GULF RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That Carmen Helpers Eugene Thomas and Cecil Burnell are entitled to sixteen (16) hours' pro rata pay account management violated Paragraph 4 of Rule 26.

EMPLOYES' STATEMENT OF FACTS: On March 22, 1939, Carmen Helpers Eugene Thomas and Cecil Burnell (at that time on the laid off list) were notified to report for work on the Rocket Terminal, Kansas City, Kansas, and did report, working from 11:00 P. M. until 7:30 A. M.

POSITION OF EMPLOYES: That when these two employes, who were on the laid off list, were notified to report for service, and did report, it constituted an increase in force, as the force was actually increased by the addition of these two men. No employes of their classification were laying off on this job, and they were not called thus to fill a vacancy of another employe laying off.

Paragraph four of Rule 26 reads as follows:

> "Twenty-four (24) hours' notice will be given before hours are reduced. **If force is to be reduced, forty-eight (48) hours' notice will be given men before reduction is made.**"
>
> (Emphasis ours)

This paragraph of the rule in the instant case was not complied with and we, therefore, feel justified in our contention that the employes are entitled to sixteen (16) hours' pro rata pay.

The management has endeavored, in correspondence, to place some sort of new interpretation of their own for calling men for emergency service. The fact remains, however, forces were increased.

We have another rule (Rule 6) governing overtime and calls for emergency work, which is applicable to men in service, and not to those laid off. If this was emergency work, men in service should have been called and paid according to this rule.

know when emergencies will arise. In fact, the employes are asking for at least sixteen (16) hours' pay for all short emergency work. The rules do not provide this.

It is only occasionally necessary to call in emergency help and, naturally, after the emergency work is performed, there is no necessity for the management to retain such emergency help in service because the regular assigned force takes care of the ordinary daily work required.

Paragraph four, Rule 26, mentioned by the employes as being violated, reads as follows:

> "Twenty-four (24) hours' notice will be given before hours are reduced. If the force is to be reduced, forty-eight (48) hours' notice will be given men before reduction is made."

The phrase "If force is to be reduced, forty-eight (48) hours' notice will be given men before reduction is made." we contend, is intended to apply when a reduction in force is made in the regularly assigned force, and does not apply to an instance where an employe is called in for a day to perform some specified emergency work which must be performed immediately, but which the regularly assigned force is unable to perform during the limited time train is laying over.

When a furloughed man is called in for extra work in an emergency on rare occasions, it cannot, we contend, be considered as an increase in the regularly assigned force. The regularly assigned force is maintained for certain definite work which it ordinarily is able to take care of during the layover period of the train.

In the instant case there was no restoration of force in the sense that the regularly assigned force was increased over that which is employed for day-to-day ordinary maintenance of the Rocket trains, and, hence, no reduction in force of the regularly assigned men was made when these furloughed extra men were released after performing the required emergency service for which called.

The very question here presented was decided adversely to the contention of the employes in Awards 20 and 21 of this Division. The Division decided this question correctly.

The first sentence of Rule 35 of agreement effective October 1, 1935, reads:

> "Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representatives, wthin ten (10) days."

Claim was first presented by General Chairman Arrington to master mechanic on April 4, 1939, fourteen days after alleged cause for complaint had ceased to exist. On this basis, as well as because of the position of the management as set forth above, the claim should be declined.

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.

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 became 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 cases 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 re-call 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 re-call 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.