

Award No. 685
Docket No. 645
2-C&WC-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 60, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**CHARLESTON & WESTERN CAROLINA RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Carmen G. M. Martin, H. H. Gray, T. L. Ulm, C. B. Garrison, H. E. Rachels, Frederick Helton, T. R. Coates, N. E. McNair, H. D. Hancock, J. B. Harrell and R. A. Hardin, employed by the Charleston & Western Carolina Railway Company, in the shops at Augusta, Georgia, be compensated for all time lost as a result of being improperly furloughed by the Charleston & Western Carolina Railway Company, account of violation and improper application of Rules 22 and 25, of the current agreement between the Charleston & Western Carolina Railway Company and System Federation No. 60. Said agreement effective as of July 1, 1938.

EMPLOYEES' STATEMENT OF FACTS: On December 18, 1940, a bulletin was posted in the shops of the C. & W. C. Railroad at Augusta, Georgia, which reads as follows:

BULLETIN, December 18, 1940

Effective December 23, 1940, the planing mill, coach shop, painters, and entire freight car department will close and remain closed until January 6, 1941. This includes the entire car department and does not include the tanners.

(Signed) W. F. Kuhlke
Supt. Motive Power

Under this bulletin of December 18, 1940, the carmen were cut off and furloughed at close of business of the first shift at 4:00 P. M. December 22, 1940. All carmen employed in the shop were cut off except five (5) car inspectors and two (2) engine carpenters.

Immediately following the effective date of the bulletin as of December 18, 1940, bringing about the reduction of forces, the management began to call men back in service, working them for a few hours of the day called back in service and again laying them off without the necessary bulletin of four (4) days' notice. This is in strict violation of Rule 22 which reads as follows:

The committee now contends that Rule 22 was violated, that when men were called to work they could not again be knocked off without four days' notice. It is the carrier's contention that Rule 22 was not violated as the men were called as agreed between the committee and Mr. Kuhlke, and were paid time and one-half for all time worked, the same as if called on Sundays or holidays. Further, it was not the intent of Rule 22 that when a shop was closed for a definite period of time and men called for emergency work that they would have to have four days' notice or be paid for four days' work not performed.

When the understanding was had with Mr. Harrell, general chairman of the carmen, as to how the emergency work was to be handled, it was also understood that the men would not be required to remain in place to protect same. It was agreed that if a man's name was reached on the board (this board prepared by Mr. Harrell), and he was not available, the next man would be called.

Since the shop shut-down and again resuming work effective as of January 6, 1941, the committee has agreed that carrier had a perfect right to close the shop or any department in the shop. However, the committee should have been furnished the names of the men affected. It is true that this was not done as with only a small number of men employed and with the arrangement of a call board and it prepared by the general chairman, surely it would be absurd to consider the claim as made when everyone affected thoroughly understood the temporary closure of the car department, not including the tanners and each man affected.

Furthermore, it could not be considered that the calling of the various employes at intervals, according to the board as prepared by the general chairman, to be a restoration of forces as it was understood that they would be called the same as if called for work on Sundays and holidays, as the payment for overtime by the rules was carried out, also the distribution of this overtime was recognized and carried out as arranged for by the general chairman of the carmen which was according to the standing on the board. This plan was used as shown by affidavit from Mr. V. J. Lamb, general foreman, car department, at Augusta, Ga., as Exhibit B.

With reference to the violation of Rule 25, a notice as shown by the bulletin was made to the car department. However, there was not any application made for any job in the locomotive department by employes holding seniority in the classification in the locomotive department during the period of December 23, 1940 to January 6, 1941, as it was understood by all concerned that the men would be called to do emergency work in the car department in accordance with the usual practice applying to Sunday and holiday work.

Carrier contends that there has been no violation of the rules of the agreement between the carrier and employes and respectfully requests the National Railroad Adjustment Board to deny this 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.

The evidence of record supports the following conclusions: that the bulletin of December 18, 1940, constituted in effect a reduction of forces as of December 23, 1940; that the subsequent use of carmen for limited periods,

prior to January 6, 1941, constituted intermittent restorations and reductions of forces; that the rights of the claimants in these circumstances are governed by Rules 22 and 25 of the agreement; and that the record is inadequate to determine the precise extent of the liability of the carrier to each of the claimants for time lost because of failure to apply the provisions of these rules.

AWARD

Claim is sustained to extent indicated in above findings, and case is remanded to the parties to determine by agreement the amount of compensation due to each of the claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1942.