

Award No. 837
Docket No. 768
2-PTRRA-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. 14, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

PORT TERMINAL RAILROAD ASSOCIATION

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement and Rule 14 (b) thereof, Carman E. C. Roberts be compensated for all time lost due to having been laid off without proper notice within the period from April 27, to November 9, 1941.

EMPLOYES' STATEMENT OF FACTS: The force of carmen at Houston, Texas, has been increased and reduced by restoring and laying off Carman E. C. Roberts as indicated below:

(a) Carman Roberts was restored to service and worked the following dates—

April 24, 25 and 26, 1941.
August 6, 1941. August 8, to August 17, 1941.
August 19, 20, and 21, 1941.
August 26, 1941.
September 5, 1941. September 9, 1941.
September 20, September 22 to and including October 4, 1941.
October 6, 1941, October 8, 1941.
October 15, 16, 17, 18, 20, 21, 22.
October 24, 25, 26, 27, 28, 29, 1941.
October 31, November 1.
November 3, 4, 5 and 6.
November 8, 1941.

(b) Carman Roberts was laid off before the expiration of the forty-eight (48) hours' notice which resulted in loss of time as follows:

16 hours on April 27 and 28, 1941.
8 hours on August 7, 1941.
16 hours on August 22 and 23, 1941.
8 hours on August 27, 1941.
16 hours on September 6 and 7, 1941.
8 hours on September 10, 1941.
8 hours on September 21, 1941.
8 hours on October 5, 1941.
8 hours on October 7, 1941.
16 hours on October 9 and 10, 1941.

assignments and work of the mechanical forces were not to be changed nor was the Association to be required to continue in service any person for even one day when the volume of work to be performed did not justify such employment. To substantiate this statement your Board is respectfully referred to the Note to Rules 23, 24 and 25, Rule 32, and the addendum to the agreement, particularly its third article, executed by the Carmen's representative under date of November 15, 1940.

For the Board's information a statement (marked Exhibit A) setting forth the extent to which it was necessary to utilize the services of Carman Roberts, as well as the second extra man during the year 1940, for repairs in excess of the work performed by the five men regularly assigned to inspection and repairs in the three yards. The year 1940 reflects our normal requirements in the way of added car repair forces and the exhibit shows clearly that the work was of an intermittent nature and did not justify any added force other than the occasional use of an extra carman.

Correspondence pertaining to the case prior and subsequent to July 1, 1941, is submitted as Exhibit B. It will be observed from General Chairman Knapp's letter of November 18, 1941, that he proposed in conference with us July 1, 1941, to waive the claim for time in this case provided agreement could be reached. As the proposed point of agreement was in short that the extra man be paid for two days when we only required his services for one day, we declined to agree.

In our letter of September 29, 1941, to Mr. Knapp, we proposed that the issue be resolved upon the basis of Article 9 of the agreement. Our proposal was declined.

Copy of the existing agreement with the shop crafts, Exhibit C, is submitted.

The Association has not received from the carmen's representative information as to any data he proposes to use. The only data passing between the representative and Association are the letters submitted as Exhibit B.

The Association is not in position to release anyone to present oral argument, nor do we feel that such oral hearing is necessary. Our position is that we did not contract to pay two days' wages for one day's work and that the agreement does not contain any evidence to the contrary. The Association requests that as neither the agreement nor past practice support the claim, it 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.

The employes rely upon the following provision of Rule 14 (b): "If the force is to be reduced, forty-eight hours notice will be given the men affected before reduction is made."

The issue in this proceeding, therefore, is whether Carman Roberts was laid off in force reductions during the period specified in the claim.

On the issue of what constitutes force reductions and the relation of notice thereto, this Division, in Awards 558 and 561, soundly distinguished between those cases in which furloughed men were worked in addition to

the regularly assigned employes, and hence were entitled to notice upon being laid off because there had been increases and subsequent reductions of force, and those cases in which the furloughed men were worked in place of regularly assigned employes who were temporarily absent, and hence were not entitled to notice upon termination of the vacancies because there had been neither increases nor reductions of force.

No adequate grounds have been adduced for disturbing the principle thus established in these awards.

In the instant proceeding it appears that Carman Roberts was worked in both of these sets of circumstances.

AWARD

Claim sustained for each instance in which Carman Roberts was worked as an addition to the force and was subsequently laid off; claim denied for each instance in which he filled a temporary vacancy.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.