

Award No. 944

Docket No. 905

2 Erie-FT-'43

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier violated the May 1, 1929 agreement and Rule 17 (b) thereof, by effecting a reduction in force the night of January 13, 1942.

That, in consideration of the aforesaid arbitrary action, each and every shop craft employe thereby deprived of his right to work on Wednesday, January 14, 1942, be paid for that day on the basis of his current shop hours and hourly wage rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier posted notices of force reductions at shop points, time and date stipulated below:

- 1: Hornell, New York, shops; 8:15 A. M., Monday, January 12, 1942, effective night of January 13, 1942—

SHIFT	SHOP HOURS	NUMBER OF MEN AFFECTED
1st shift backshop	7 A.M. to 4 P.M.	110 men
2nd " "	4 P.M. to 12 P.M.	100 "
2nd " roundhouse	3 P.M. to 11 P.M.	12 "
3rd " "	11 P.M. to 7 A.M.	10 "

- 2: Jersey City, New Jersey, roundhouse, 7:00 A. M., Monday, January 12, 1942, effective night of January 13, 1942—

SHIFT	SHOP HOURS	NUMBER OF MEN AFFECTED
1st shift roundhouse	8 A.M. to 4 P.M.	20 men
2nd " "	4 P.M. to 12 P.M.	4 "
3rd " "	12 P.M. to 8 A.M.	1 "

- 3: Seacaucus, New Jersey, roundhouse, 6:30 A. M., Monday, January 12, 1942, effective night of January 13, 1942—

SHIFT	SHOP HOURS	NUMBER OF MEN AFFECTED
1st shift roundhouse	7 A.M. to 3 P.M.	19 men
2nd " "	3 P.M. to 11 P.M.	16 "
3rd " "	11 P.M. to 7 A.M.	3 "

until shortly after 8:00 A. M. This did not alter the fact that proper notice was given or that each employe affected was enabled to work two full eight-hour days after notice was first given to their representatives.

As a result, Secretary-Treasurer John A. Marvin, in a letter to Mr. R. V. Blocker, superintendent of motive power, June 5, 1942, progressed in the usual manner the following claim:

"The following case is being progressed to you and has been handled in writing with Messrs. Moore—McMullen—Murray and Carlson and replies received which are not satisfactory.

At Jersey City Roundhouse—Secaucus Roundhouse—Susquehanna Coach Shop and Hornell Locomotive Shop, on January 13th, 1942, men were laid off and were not given the proper forty-eight hour notice. There may be other points not as yet heard from.

This is in violation of Rule 17 (b) of the Shop Crafts' Agreement and Rule 13 (b) of the Firemen & Oilers' Agreement. Therefore we are claiming one day's pay for all men who did not get the required forty-eight (48) hour notice. Please advise."

Up to this time there had been no protests filed in favor of any employes who are covered by Rules for Mechanical Department Employes, dated October 1, 1934; however, Rule 13 (b) cited by Marvin is self-explanatory and there is no evidence presented for employes within the scope of these rules to demonstrate that a proper notice was not afforded or that they were unable to work two full eight-hour days subsequent to notice.

This case was not disposed of and was progressed through the usual channels and it is now submitted ex parte to the Second Division as a general claim although originally filed covering only Jersey City roundhouse, Secaucus roundhouse, Susquehanna coach shop and Hornell locomotive shop.

We consider this claim for additional day's pay is not justified under Rule 17 (b) of the Rules and Rates of Pay for Mechanical Department Employes, effective May 1, 1929, or Rule 13 (b) of Rules for Mechanical Department Employes, effective October 1, 1934, and accordingly should be denied for the following reasons:

1. There is no evidence produced to demonstrate that representatives of the employes were not fully informed of force reductions as required by these rules nor to demonstrate that any employe affected was unable to work two full eight-hour days between notice and force reduction.
2. At Hornell, New York, failure, if any, was the direct result of action by local committeemen proposing a change in the original notice as prepared and submitted and which proposal and change resulted in the notice not being "posted" until shortly after 8:00 A. M., instead of at 7:00 A. M. as contemplated, although notice "was given" in due time.
3. We are not fully informed as to the exact reason for this case. Locally at Hornell it has been changed from time to time. The System Federation appeared to depend entirely on that part of notice which said "Effective the night of January 13th," but it is not disputed that actual force reduction did not occur until at least 7:00 A. M., January 14th, and in many cases as late as 11:00 P. M., January 14.

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.

Under the agreement effective May 1, 1929, forty-eight hours notice must be given before any reduction in force is made. It is clear from the record that the bulletins posted were improper as they did not allow forty-eight hours notice, however, it is also clear from the record that the men were actually allowed to work until the expiration of the forty-eight hours; therefore, the instant claim is denied.

AWARD

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1943.