Award No. 1264
Docket No. 1188
2-AJT-MA-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 110, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

ATLANTA JOINT TERMINALS

DISPUTE: CLAIM OF EMPLOYES: 1. That when Virgil Bailey, furloughed machinist helper, was restored to service on third shift, 11:00 P. M. to 7:00 A. M., effective November 24, 1947, he was subject to the terms of the current working agreement.

2. That accordingly the Atlanta Joint Terminals (hereinafter referred to as the carrier) be ordered to additionally compensate the aforesaid employe, subsequent to 7:00 A. M., December 2, 1947, as follows:

(a) From 3:00 P. M. to 11:00 P. M. on Tuesday, December 2, 1947, at overtime rate for changing from the third to second shift.

(b) From 3:00 P. M. to 11:00 P. M., Monday, December 15, 1947, at straight time pay. Laid off without proper notice.

(c) From 7:00 A. M. to 3:00 P. M., Tuesday, December 16, 1947, at overtime rate for having been changed from the second to first shift.

(d) From 3:00 P. M. to 11:00 P. M., Wednesday, December 17, 1947, at overtime rate for having been changed from the first shift to second shift.

EMPLOYES' STATEMENT OF FACTS: Machinist Helper Virgil Bailey (hereinafter referred to as the claimant) was regularly employed as such by the carrier at Atlanta, Georgia, on the second shift, 3:00 P. M. to 11:00 P. M., when affected in reduction of force made effective September 2, 1947, pursuant to the copy of a bulletin submitted herewith as Exhibit A.

The carrier elected to fill a vacancy of machinist helper on the third shift, 11:00 P. M. to 7:00 A. M., effective November 24, 1947, thereupon restoring the claimant to service on the said shift as of that date.

The claimant was transferred from the third shift to the second shift, effective December 2, 1947, and compensated therefor at straight time pay. He remained on second shift assignment until discontinued in service at 11:00 P. M., December 14 in omission of proper notice provided for in the agreement.

The position of the employes, if sustained, would create an inequitable and intolerable situation, and one plainly not contemplated by the rule or the intent of its makers. Under such an interpretation employes could force excessive extra employment. By laying off one day a man could cause the employment of another for four days. Dissatisfaction would result because the carrier would be forced, by considerations of reason, to either require a man to lay off for four days before permitting an absence, or not fill the job at all.

The second question involves Rule 18, previously quoted, and also Rule 10, which applies to changing shifts. Rule 10 reads:

"RULE 10—CHANGING SHIFTS

Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

From its text it is plain that this rule is intended to prescribe a penalty to the carrier when it, because of some advantage accruing to it, changes a man who suffers some disadvantage, from one shift to another. But it is not applicable when changes are not made at the carrier's instance.

The carrier argues here again that the extra or furloughed man, himself, holds no position and is merely a representative of an absent man. The absent man's position has not been affected under the provisions of Rule 10 and it, therefore, cannot properly be said that his representative has been so affected.

Further, such consideration is entirely out of keeping with reason, equity and the spirit of the rule.

With respect to both questions the carrier states that the current rules are a part of an agreement entered into on August 12, 1944, and the practice followed in this case is identical with that of every other such case occurring since the date of the agreement. Employes have never before questioned this application of the rules and it is the established practice which, itself, demonstrates the intent of the parties to the agreement.

Further, the position of the carrier and its interpretation of these rules, and the established practice under the rules, is in strict accord with principles laid down in your Awards 558, 561 and 837.

The carrier, therefore, feels the employes' claim is entirely without merit and respectfully requests that it 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 were given due notice of hearing thereon.

This claim is between the same parties and based on like facts (except as hereinafter noted) and the same rules as in Docket 1183 upon which Award 1262 is based. What is held in that award is likewise controlling here except as to claim (d) for change of shift on December 17, 1947 (carrier says December 18, 1947) after claimant had been restored to service on

December 16, 1947. Under Rule 10 of the current agreement the claim as it relates to this change of shift should be allowed but otherwise denied.

AWARD

Claim denied except as to (d) which is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1948.

Dissent to Awards Nos. 1262, 1263 and 1264.

The undersigned dissent from the above majority decision of the Second Division of the National Railroad Adjustment Board in Awards Nos. 1262, 1263 and 1264.

The vital point involved in these awards is, when or under what conditions or circumstances is a furloughed employe "restored to service"?

There are two separate and distinct actions or procedures covered in the rules here involved that cannot be separated and treated as single items standing alone; they are so closely interrelated with other rules that to do so upsets the entire rules structure.

The two actions or procedures are, separating forces (men) from service and restoring forces (men) to service. The first action comes on the separation or removal from service—the rules provide that separation or removal can be made, where it can be made and the method of making it. There are no exceptions or options. The second action, the one here involved, comes on restoration or returning of men to service—the rules provide that men will be restored or returned, the basis upon which they will be restored or returned and to what position they will return. There are no options and only one exception, which is, "if available within a reasonable time".

An individual having an employe relationship under the terms of the agreement has all the rights applicable, unless expressly exempted or prevented by specific terms contained in the agreement.

The decisions in these three awards cause men in the service of a carrier to be denied their contract rights contained in many rules in the agreement—it denies them specific rights contained in the specific rule here involved—it sets up a group of certain men as a group separate and apart from all others, who are specifically denied many contractual rights. There are no provisions in the agreement, either by direct statement, by exception, by option or by inference to justify the decisions made.

In our brief in these cases we said in part:

> "There are two separate and distinct questions involved in these dockets—one, involving furloughing men from and restoration to service and two, transfer time. We will deal with each question separately.
>
> Reduction in force and restoration to service rules, insofar as the basic provisions are concerned, are, for all practical purposes, the same on most all railroads. There are minor differences, but those minor differences are not here involved.
>
> These basic provisions have been in agreements for many years, even prior to the National Agreement of 1919. The carriers in 1921, when all the rules of the National Agreement were open before the United States Railroad Labor Board, argued for many changes in

the furloughing men from and restoration to service rules. (National Agreement Rule 27.) The United States Railroad Labor Board, however, made no changes in the basic provisions of the former rule when they issued their rule in Addendum No. 6 to Decision 222.

After the 1922 shopmen's strike many so-called company unions came into existence. Agreements were written containing rule provisions not theretofore contained in agreements negotiated by bona fide labor organizations. Among other things there came into existence so-called "stand-by" or "extra" forces. These forces were composed of men who were first hired or employed and then, at the will of the carrier, were laid off or furloughed and advised that if and when any work was available they would be called in. What actually happened was that men in this group even waited at the shop gates for a call to work. A man under these circumstances didn't have a job—he only had an aggravation; under these circumstances there was no stability of employment; no sense of security. It enabled the carrier to reduce the so-called regular force to a minimum need or even below, knowing full well that their work requirements were safeguarded by these readily available workmen.

The standard furloughing men from and restoration to service rules were designed to prevent these situations mentioned above and did prevent them until they came back into existence under company union conditions. Some roads, having standard rules, recognized this advantage to them of doing the same thing, which was an unfair advantage, and attempted to do it.

The first cases of that nature came to this Division in 1935, the violation complained of occurred in 1931. They came from the New York Central; they were deadlocked and decided with the assistance of Referee Devaney; they were our Dockets Nos. 12 and 13, Awards Nos. 20 and 21. In deciding these two cases Devaney said, 'This calls for a construction of the meaning of certain language used in the rule. The language is cumbersome. The intention of the parties could have been made clear by the use of a few simple words.'

The decision supported the position of the carrier but was not to be an interpretation or serve as a precedent.

* * * *

Following the decisions of Referee Devaney in Awards Nos. 20 and 21, and acting on the suggestion of Referee Devaney that 'the intention of the parties could have been made clear by the use of a few simple words,' the shop craft employes decided to attempt to clarify that point when agreements were open for changes.

These cases are the first ones that have come to this Division under an agreement containing the added paragraph to the furloughing men from and restoration to service rule. It is paragraph (d) of Rule 18 in effect on this railroad—it reads, 'Employes restored to service will not be laid off again without the four days' advance notice provided in this rule.'

Therefore, these men who were restored to service and again taken out of service without having been given four days' notice are entitled to four days' pay in lieu of said notice in each instance where such improper furlough took place.

* * * *"

As stated in the above there is an added paragraph, Rule 18 (d), not contained in any agreement involved in prior cases, on this point, the added language has great significance in the light of the historical record—it should not have been so lightly cast aside.

That part of the decisions dealing with the transfer time dispute clearly demonstrates that these men are set apart as a separate group, working for the carrier just like their fellow workmen, but who are denied the same rights and benefits of the agreement provisions as their fellow workmen would have enjoyed if involved in the same kind of case.

Machinist Helpers Willie Ross, having been employed on eighteen (18) days from November 20 to December 27, 1947, and Virgil Bailey having been employed on twenty-two (22) days from November 24 to December 16, 1947, surely cannot be said to not be employes subject to the same rules that apply to any other employes beside whom they work.

These decisions do not and cannot be supported by any language contained in the agreement. As these decisions stand, it opens the way for the distortion of many provisions of agreement simply because it sets apart a group of men who are denied the same rights as other men beside whom they work. These decisions will permit of acts that will enable them to evade certain provisions of the agreement and to an extent far beyond just those elements here involved.

It is a well recognized doctrine of contract construction that if a certain interpretation of the language of a contract will produce absurd results, then that interpretation should be abandoned in favor of one which does not produce such results.

H. J. Carr

A. C. Bowen

T. E. Losey

George Wright

R. W. Blake