

Award No. 1368
Docket No. 1296
2-C&NW-MA-'50

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. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Machinist Helpers J. Dobner, E. Shiek, R. Tufts, J. Vensiano and J. P. Lopez, were laid off without proper notice effective at the close of their shift on May 17, 1949, and Machinist Helper Sam Grippo was laid off without proper notice effective at the close of his shift on May 18, 1949, and that accordingly the carrier be ordered to reimburse each of these employes in the amount of five (5) days of eight (8) hours each at their straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: The carrier employed the above claimants as machinist helpers at Proviso, Illinois, on the following dates:

Sam Grippo	7-12-48
J. Dobner	8-24-48
E. Shiek	10- 5-48
R. Turfts	10-28-48
J. P. Lopez	11-10-48
J. Vensiano	12-20-48

and they worked continually as such until they were informed by their foreman that they were being laid off at the close of their shifts on May 17 and 18, 1949, respectively.

The agreed-to standard notice was not posted notifying the claimants that five (5) working days from date of notice they would be laid off.

The agreement effective July 1, 1921, amended effective January 1, 1925, and as subsequently amended, is controlling.

POSITION OF EMPLOYES: The controlling agreement contains no provision whereby the carrier can summarily remove an employe covered by the federated crafts' agreement from service without granting five (5) working-days' advance notice required by the standard type of bulletin, copy submitted, identified as Exhibit A, and it has been jointly agreed that such bulletin would be used in making force reduction under the provisions of Rule 25, which, in part, reads:

tem Federation No. 12, Railway Employees' Department, A. F. of L., covering the advancement of regular apprentices, helper apprentices, and helpers to positions of mechanic on a temporary basis; also submitted herewith, identified as carrier's Exhibit B, is a copy of memorandum agreement dated January 29, 1947, outlining understanding in respect to extension of memorandum agreement of April 24, 1946, covering retention of promoted apprentices and helpers on mechanic positions and promotion of apprentices and helpers to fill vacancies in mechanics' positions.

At Proviso, Illinois enginehouse there were a number of helpers who had been advanced to positions of mechanic under provisions of the memorandum agreement covering promotion of apprentices, helper apprentices, and helpers on a temporary basis, which agreement specifically provides that when a qualified mechanic is employed after May 1, 1946, at points where there are promoted helpers or apprentices, a promoted helper or apprentice of the craft in which the mechanic is hired will be reduced to his former status on the employment of such mechanic. A number of mechanics who had been laid off at 40th Street, Chicago, Illinois, (Proviso and 40th Street are separate seniority points) insisted that they be permitted to take up employment on mechanic positions at Proviso held by helpers who had been temporarily set up as mechanics. Such permission was granted in line with the provisions of the temporary promotion agreement. The set-up helpers who were demoted to their former status on the employment of the qualified mechanics, as provided in the memorandum agreement, exercised their seniority rights by displacing junior helpers to the extent of the number of qualified mechanics who had been hired to fill the mechanic positions held by the temporarily set-up helpers. The above changes did not involve any increase or reduction of the force at Proviso enginehouse.

POSITION OF CARRIER: The claim of the organization for five days' pay for the helpers is based on an alleged violation of the provisions of Rule 25 of the current agreement. However, Rule 25 only requires that men affected be given five days' notice when there is a lay-off due to a force reduction but such rule does not require that the carrier give five days' notice to an employee laid off as a result of the exercise of displacement rights. It is the position of the carrier that the displacement of the helpers at Proviso enginehouse as a result of the employment of the available qualified mechanics to fill the mechanic positions held by the set-up helpers did not constitute a reduction in force as referred to in Rule 25, and that, therefore, the laid off helpers were not entitled to five days' notice of their lay-off. Reduction of forces means a decrease in the number of men employed, and in this case the total number of helpers at Proviso enginehouse was not decreased by the employment of the available qualified mechanics.

It is the further position of the carrier that there is no merit to the employees' contention that the provisions of Rule 25 of the current agreement were violated in this case. The carrier only complied with the provisions of the memorandum agreement which required that when qualified mechanics were available and employed at points where helpers had been promoted to mechanic positions the helpers would be reduced to their former status on the employment of such mechanics.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Memorandum Agreement of the parties, under which the carrier carried out the operations here complained of, does not abrogate Rule 25 of the parties' agreement effective, as amended, January 1, 1925. Neither does

it modify or qualify any other rule or provision of the agreement except as they may relate to the subjects expressly covered therein.

Pursuant to the authorization granted by the Memorandum Agreement carrier actually used helpers as mechanics at Proviso, Illinois, enginehouse. These helpers performed the work of mechanics and received pay as such although they retained their status on the seniority roster as helpers and continued to accumulate seniority as helpers.

At the time here complained of carrier had reduced its forces at 40th Street, Chicago. Mechanics there laid off applied for this work at Proviso, Illinois, enginehouse. As provided by the Memorandum Agreement, the mechanics who applied were assigned to do the mechanics' work in place of the helpers who had been temporarily doing it. Thereupon the helpers so displaced, being thereby returned to their former status, displaced the claimants. The claimants so displaced were laid off without notice.

"Reducing Forces," within the meaning of the first two paragraphs of Rule 25 of the parties' effective agreement covering that subject, requires a decrease in the number of people actually employed. Here the record shows that the actual number of people employed to do mechanics' work at the Proviso, Illinois, enginehouse, and the number of people employed there to do helpers' work, remained the same both before and after these claimants were displaced and laid off. Likewise there is no evidence that it resulted in any reduction of expenses.

The factual situation here does not come within the meaning of the language of the first two paragraphs of Rule 25 of the parties' effective agreement. Consequently the carrier was not required to give the employees the "five days' notice" which is therein provided for.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1950.