

Award No. 1469

Docket No. 1380

2-Pull-EW-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement and vacation agreement, Electrician L. A. Raupp was improperly furloughed when the days while he was on vacation were counted as days of notice in the force reduction effective December 4, 1949.

2. That accordingly he be compensated for five days at straight time rate of pay, eight hours per day, because he was denied work in violation of agreement rules.

EMPLOYES' STATEMENT OF FACTS: Electrician L. A. Raupp, hereinafter referred to as the claimant, was scheduled for his annual vacation from November 27 to December 3, 1949, inclusive. On November 26, 1949, General Foreman J. R. Hickson gave claimant a furlough notice to become effective December 4, 1949, a copy of which is submitted herewith and identified as Exhibit A. Carrier instructed the claimant to take his vacation as scheduled.

The dispute was handled with the carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement as the claimant was given a furlough notice one day prior to his vacation, and in accordance with Article 5 of the vacation agreement, which provides:

"An employee entitled to vacation who has not received his vacation prior to furlough shall take his vacation commencing the first day of his furlough period."

The carrier should have started the claimant's vacation the first day after the effective day of the furlough notice, but the carrier ignored this provision

lough. The organization cannot bring forward any evidence that this practice was abandoned effective with the date of the current working agreement. to furlough craft employees in seniority order including employees who are absent on vacation or absent because of illness on the effective date of furlough of the organization to procure an interpretation of a rule obviously contrary to the plain meaning and intent of the rule and contrary to a practice that is much older than the rule.

CONCLUSION

The facts as herein presented support the premise upon which the company rests its case. The company has shown that under the agreement between The Pullman Company and its electrical workers, effective July 1, 1948, with particular reference to **Rule 48. Advance Notice of Force Reduction**, management is required to issue a five working days' notice (exclusive of day notice is served) upon the electrical workers to be furloughed at a Pullman point where a force reduction is being made. The company has shown that Rule 48 does not require that individual furlough notices shall be served, as contended by the organization in behalf of Raupp.

The company also has shown that the meaning and intent of Rule 48 of the agreement become further evident when consideration is given to **Rule 49. Reduction or Adjustment of Forces**, which requires the company to reduce forces on a seniority basis. Thus, the provisions of Rule 49 required management to include Raupp's name in the group of eight electricians in the Pittsburgh district who were furloughed effective December 4, 1949. To have omitted Raupp's name would have subjected The Pullman Company to a claim from a senior employe, Electrician E. J. Imperiale, that the latter had been furloughed out of seniority order.

Additionally, the company has shown that the practice long has been Thus, both the rules of the current agreement and past practice establish that the company correctly furloughed Raupp on December 4, 1949.

The company submits that the instant claim should be denied: First, because under the rules of the agreement the company is required to give five working days' notice to the employes at a point who are to be furloughed and that such furloughing shall be done in seniority order. Any other application of Rule 48 would be cumbersome, impractical and unrealistic. Second, the instant claim should be denied because Pullman practice long has been to furlough craft employes in seniority order including employes on vacation or absent for other reasons on the effective date of furlough.

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.

Claimant was scheduled for his annual vacation from November 27 to December 3, 1949, inclusive. On November 26, 1949, carrier gave him written notice that he would be furloughed effective December 4, 1949. Claimant was required to take his vacation as scheduled. It is contended by claimant that his vacation should have been started on the first day of his furlough period. The controlling rules are:

"An employe entitled to vacation who has not received his vacation prior to furlough shall take his vacation commencing the first day of his furlough period." Art. 5, Vacation Agreement.

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"Not less than 5 working days' notice (exclusive of day notice is served) shall be given to employes to be furloughed before a reduction in force is made and names of employes to be furloughed shall be furnished the chairman of the local committee." Rule 48, current agreement.

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The purpose of Rule 48 is to give notice to the employe that he will be furloughed at a stated date in order that he will have some opportunity to protect his personal interests. The rule also gives the chairman of the local committee an opportunity to verify the correctness of the application of the furlough rules before the furlough becomes effective. Rule 48 is not a guarantee of work rule in any sense of the word. In the case here presented, the furlough rule was correctly employed unless Art. 5 of the Vacation Agreement comes into play.

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The first day of claimant's furlough period was December 4th, 1949. It is evident therefor that claimant's vacation period was taken prior to that date. He had therefor received his vacation before being furloughed and Article 5 of the Vacation Agreement can have no application.

It will be noted also that claimant received his vacation pay for his full vacation period. He also received 5 working days' notice before the effective date of his furlough. This is all that these two rules give him. A furlough of employes to secure a reduction of force usually involves a number of employes. Seniority rights must be strictly observed. If employes on vacation, on leave, or absent because of illness are required to actually work during the five-day notice period in order to make the furlough effective, seniority rights would be impossible of solution without bringing about violations of the agreement. Such results will not ordinarily be held to have been within the contemplation of the parties when they entered into the agreement. A common furlough date is necessary in order to determine the seniority rights of employes. To construe the agreement as the organization would have us do it, would, in many cases, make this wholly impossible.

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We think the rule contemplates that the five-day notice to employes to be furloughed in securing a reduction by force may be given to them while they are on vacation, on leave, or absent because of illness, as well as during the time they are working their positions. This interpretation of the rule appears to be in accord with the interpretations placed upon it by the parties for many years in the past. This is very convincing proof of what the parties mutually intended when the agreement was negotiated. A denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1951.