**Award No. 1500**
**Docket No. 1414**
**2-MP-FT-'52**

# NATIONAL RAILROAD ADJUSTMENT BOARD
## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.**

---

## PARTIES TO DISPUTE:

### SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

### MISSOURI PACIFIC RAILROAD COMPANY

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement the carrier improperly furloughed employes coming within the jurisdiction of the seven (7) Shop Crafts at the close of their shift on September 9, 1949, by denying them four (4) working days' notice.

2. That accordingly the carrier be ordered to compensate all such employes for each day they were denied the proper notice.

**EMPLOYES' STATEMENT OF FACTS:** The carrier, under date of September 6, 1949, caused to be posted at all points on the Missouri Pacific Railroad, force reduction bulletins, effective at close of shift starting after 12:01 A. M., Friday, September 9, 1949, affecting all employes. Included in the four (4) days' notice were rest days of certain employes.

This case was handled with the highest designated carrier officials, who declined to adjust this dispute.

The shop craft and firemen and oilers agreements, effective September 1, 1949, are controlling.

**POSITION OF EMPLOYES:** It is submitted that the carrier violated rules of controlling agreements, particularly Rules 21(b), mechanical section, and Rule 16(b), firemen and oilers.

The bulletins as posted on September 6, 1949 read as follows:

> "Effective with the close of each shift starting after 12:01 A. M. Friday, September 9, 1949, the following reduction in force will be made in accordance with Rule 21."

Also a similar bulletin affecting laborers, and ending with the following:

> "In accordance with Rule 16(b)."

Immediately following that part of the afore-quoted bulletins a list of names of all employes, seniority dates etc., was attached.

to September 1, 1949, those men who were absent at the time of force reduction were not permitted to come back and work four days when their vacation was ended or whenever the men desired to report and were ready to work. This should be conclusive proof that the notice did not apply to the working days of an individual, but applied to the working days of the position.

Careful analysis of the foregoing shows conclusively that, prior to September 1, 1949, the four working days' notice was considered and applied in the posting of notices reducing force to the position and not to the individual; likewise, since September 1, 1949, four working days' notice has been considered and applied to the position and not to the individual. The change in the right of the individual to work all of the days of the week that a job was filled prior to September 1, 1949, was made on September 1, 1949, but this change in the rights of the individual did not make a change in the working days of a position. Therefore, the term "working days" continues to mean what it did prior to September 1, 1949, and that is, the days the position is assigned to work each week.

Rule 21 is not a rule establishing severance pay at the time of a force reduction but that is what the employes are trying to establish in progressing this claim.

The claim should 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 were given due notice of hearing thereon.

The facts of this case are not in dispute and the parties concede a decision of its only issue, i.e., whether proper notice of reduction in forces was given the employes involved, depends upon how language used in the rules of two agreements is to be construed.

On this issue the carrier takes the position notices of force reduction can include the rest days of seven-day positions and the organization that such days must be excluded.

Rule 21 (b) of the Shop Crafts' agreement reads:

> "If the force is to be reduced, **four working days' notice will be given the men affected before reduction is made***".** (Emphasis supplied).

Rule 16 (b) of the Firemen and Oilers' agreement provides:

> "When force is reduced junior men will be laid off and the senior men on the seniority roster capable of doing the work will be retained. **Four working days' notice will be given the men affected** before reduction is made***". (Emphasis supplied).

The emphasized language appearing in the foregoing rules is clear, concise, and unambiguous. Therefore, according to all well recognized principles of contractural construction it must be given its common and ordinary meaning. When that is done we are convinced the term "working days" as used therein must be construed as having reference to the days an employe normally or regularly works his position, not to the days the position itself is scheduled to work as the carrier contends. Indeed, that such term must be so

construed finds support in the carriers' own admissions to the effect that even on seven day positions, which we pause to point out are the only positions here involved, such rules do not permit notices of force reduction to include holidays. Certainly it cannot be successfully argued that a holiday, regardless of who may be assigned to work it, is not a scheduled day of a seven day position.

From what has been heretofore related it appears, in the absence of anything else to preclude their application, that Rules 21 (b) and 16 (b), **supra**, require that employes occupying seven day positions have four working days' notice of a reduction in force, exclusive of rest days, and that hence the employes herein involved whose rest days were included in the four days' notice given by the carrier were improperly furloughed.

Turning to contentions advanced by the carrier as grounds for a contrary construction of such rules we note it is first contended seniority provisions of the agreement cannot be complied with if the rules are to be construed as indicated. We are not too certain this contention has merit for in its submission the carrier impliedly concedes, if in fact it does not actually admit, that force reductions could be made without conflicting with seniority rights if the notice thereof was posted more than four days in advance of the desired reduction. Be that as it may, the proper remedy for disposing of rules of an agreement that experience has proved impracticable is by negotiation, not by a request to this Division to read something into them that is not there.

Next it is argued that by long continued practice the parties have placed their own and a contrary interpretation on the rules in question. The evidence on this point is conflicting and far from satisfactory. Consequently, we cannot say the carrier has maintained the burden of establishing past practice by the degree of proof required to warrant us in holding such rules are no longer entitled to full force and effect.

Finally Award 1469 is cited as a precedent contrary to the conclusion herein announced. We do not agree. In the first place when the record in that case is examined it appears the rest days of the employe named in the claim were not counted in the furlough notice given. In the next, the days an employe is on vacation, on leave or absent because of sickness, excluding his rest days, are days he would normally and regularly work his position, hence they were countable in that case, and for that matter would be properly countable in this case, as working days in applying the rules there and here in question.

We find nothing in other rules of agreement or in the contentions advanced to sustain the carrier's position.

AWARD

**Claim sustained.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

**Dated at Chicago, Illinois, this 10th day of January, 1952.**