Award No. 1553
Docket No. 1472
2-IC-CM-'52

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. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman A. C. Price was improperly denied the four (4) days' notice before he was furloughed after being recalled to service on May 10, 1951.

2. That accordingly the Carrier be ordered to compensate the aforesaid carman in the amount of four (4) days' pay.

EMPLOYES' STATEMENT OF FACTS: At McComb, Mississippi, on May 8, 1951, Mr. D. G. Travis, superintendent car shop, posted a bulletin calling eleven (11) carmen, five (5) carmen helpers and two (2) carmen apprentices to work effective 7:00 A. M., May 10, 1951. Copy of bulletin submitted herewith and identified as Exhibit A.

Mr. A. C. Price, with a seniority date of June 25, 1934, hereinafter referred to as the claimant, was the junior carman recalled to service. He reported for work as instructed but was not permitted to work.

The agreement effective April 1, 1935, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier, in accordance with the second paragraph of Rule 28, reading in part as following:

> "In the restoration of forces, senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible.
>
> The local committee will be furnished list of men to be restored to service . . ."

restored forces effective May 10, 1951, furnishing the local committee a list of men to be restored to service and included in the list was the claimant, who reported to work as instructed by bulletin, identified as Exhibit A, but was not permitted to work, and since the carrier elected to restore him to service and notified him to that effect, he was not subject to be furloughed without first granting him the four days' notice as provided in that part of Rule 28, which reads:

of Rule 85. Rule 10 still operates unimpaired within its sphere, for an employe must still establish that he can perform the work properly. The carrier afforded the complaining employes proper and reasonable opportunities to take a written examination and there is no cause for complaint." In the instant case carrier had no evidence that Mr. Price was a qualified welder, and his unexplained failure to take the welding test was reasonable grounds for assuming that he was not. Furthermore, employes have never contended that Mr. Price was in fact a qualified welder. Therefore, in accordance with Awards 79 and 622 it is clear that carrier was within its rights in by-passing Mr. Price and returning junior employes to the service who were qualified to do the work available.

Your Board said in Award 1368: " '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 employes the 'five days' notice' which is therein provided for." Likewise, in this case there was no reduction in force and, therefore, no requirement of four days' notice or pay in lieu of notice. Claim should, therefore, 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.

The carmen of System Federation No. 99 contend the carrier failed to give Carman A. C. Price, after being recalled to service, a four-day notice, as required by Rule 28 of their controlling agreement, before again placing him on furlough. They ask that carrier be ordered to pay Price for four days because of the violation.

Rule 28 does require such notice when an employe is released from service because of a reduction in forces. One of the questions presented is, was Price ever recalled and restored to service on May 10, 1951? If not, then we need not discuss the question of whether or not the action taken by carrier resulted in a reduction of forces.

The facts show that when carrier, because of increased work, needed additional employes it issued a bulletin at McComb, Mississippi, advising of that fact and directing 18 employes, including 11 carmen, 5 carmen helpers and 2 car apprentices, to report for work at 7:00 A. M. on May 10, 1951. This list was published in accordance with the requirements of seniority and the rights of furloughed men. Of the eleven carmen, Price was the junior in seniority and appeared as number eleven on the list published. When Price reported for work he was advised that the only work available for him was welding. It appears he was not qualified to do this type of work. The matter was then taken up with the local committee and a check made but it was determined no shifts could be made that would permit using Price's services without disturbing the assignment of some senior employe. Consequently Price was not restored to service.

It is apparent the parties realized that each carman is not necessarily qualified to perform every type of work that carmen perform. This is evident by a letter of agreement entered into by the parties on December 29, 1948, and effective June 1, 1949, which relates to this subject when either a reduction or restoration of forces becomes necessary. The letter of agreement makes the following principles applicable here.

After the list of employes has been bulletined giving the names of the employes being furloughed or recalled there arises the question of qualification. This relates to the type of work which carrier requires to be performed. In cases of restoration, it involves the qualification of those being recalled to perform the work of the positions being restored, it being agreed in such cases that if any of the men being recalled are not qualified to perform it that then the matter will be taken up with the local committee to see if adjustments can be made among the remaining forces to permit his restoration to work for which he is qualified. This was done but it was not possible to do so. Thus Price, who was not qualified to perform the work of the position to which he had been recalled, was not restored to service and carrier properly called and assigned a junior qualified carman thereto. Not having been restored to service, Price was not subject to the four-day notice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952