

Award No. 1737
Docket No. 1645
2-DS-URRWA-CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C.I.O.
DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That five locomotive Shop men, C. McIntosh, I. Addis, E. Smith, F. Crow and J. Rovny, be paid eight hours each at straight time rate for work which was performed by junior employees on July 28, 1952.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto dated August 29, 1949, copy of which is on file with the Board and is by reference hereby made a part of the statement of facts.

That the carrier on June 2, 1952 posted a notice abolishing all jobs in the locomotive and car shop to take effect, Thursday, June 5, 1952.

On July 28, 1952, the carrier recalled junior employees for duty and at the same time ordered senior employees to report for duty on the following day.

POSITION OF EMPLOYEES: It is respectfully submitted that in this case the company violated the agreement by having the junior men report first for duty, as the agreement, Article 17, reads as follows:

"Article 17

(a) When it becomes necessary to reduce expenses, workmen of less than two (2) years of service will be furloughed by occupation before hours are reduced. Hours per workman may then be reduced to twenty-four (24) per week before any further reduction in forces is made.

(b) In case of reduction in force or the abolition of positions, employees affected shall be allowed to exercise their seniority in displacing junior employees by occupations.

June 2, 1952, had not "abolished" jobs but had stated that the men were "furloughed," the method adopted in returning them to their "former positions" would have complied with Article 17(f) and there would be no claim. This distinction is untenable. If jobs were not abolished, no men could have been furloughed and, consequently, there could not have been any reduction of forces; and without a reduction of forces there could be no restoration of forces as contemplated by Article 17(f). It follows that the jobs abolished became the "former positions" contemplated by Article 17(f). The former positions to which the claimants were returned were positions they held through exercise of their seniority prior to the force reduction. Upon restoration of forces all positions were bulletined in accordance with Article 10. Since all of the former positions were restored, it was possible to return all employees to their former positions. We believe the schedule agreement was complied with literally.

It is, therefore, respectfully submitted that the claim be denied and the carrier requests that the Board so decide.

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 waived right of appearance at hearing thereon.

This dispute arises over the question of seniority in recalling furloughed employees into service.

On Monday, June 2, 1952, carrier abolished all positions in its Locomotive and Car Shops at Donora, Pa., same to become effective at 3:00 P.M. on Thursday, June 5, 1952. The reason for doing so was a strike of United Steelworkers. On June 5, 1952, all employees whose positions had been abolished were given furlough notice. The strike having ended the carrier, as of Sunday, July 27, 1952, recalled these employees to its service. On Monday, July 28, 1952, carrier advertised positions in its Locomotive and Car Shops, in accordance with Rule 10 (a) of the parties agreement and, as of Saturday, August 2, 1952, assigned the successful bidders thereto. However, pending assignment under these bulletins, carrier temporarily filled the positions under the provisions of 17 (f) and not under 10 (a), the latter requiring it to be done solely on the basis of seniority.

It will be noted that carrier abolished all positions in its Locomotive and Car Shops effective as of June 5, 1952, and that the subsequent reduction of force and placing of employees on furlough resulted therefrom. Consequently it was necessary, when the time came to again resume work, to bulletin new positions and to comply with the requirements of the agreement relating thereto. If carrier had desired to make the provisions of 17(f) available when it resumed work it should have placed these employees on furlough without abolishing their positions. As stated in Award 1499 of this Division.

"... existing positions were not abolished but employees were merely furloughed with the intention of returning them to their regularly assigned positions."

Under the situation here carrier was required to recognize the seniority of its employees in temporarily filling these bulletined positions pending their being permanently filled. We find the claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1954.