Award No. 2274
Docket No. 2056
2-MKT-CM-'56

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:

SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Carmen)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Oiler (Carman Helper) Alonzo E. Kays was improperly furloughed on June 28, 1954 when he was not given the proper furlough notice.

2. That accordingly the Carrier be ordered to compensate the aforesaid Carman Helper in the amount of one day's pay at the applicable rate.

EMPLOYES' STATEMENT OF FACTS: Alonzo E. Kays, hereinafter referred to as the claimant, was regularly employed as a freight car oiler (carman helper) by the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas, hereinafter referred to as the carrier, at Glen Park, Kansas City, Kansas. Claimant was regularly assigned to the 11:00 P. M. to 7:00 A. M. shift, Saturday through Wednesday, rest days Thursday and Friday.

On Friday, June 25, 1954, the carrier posted a bulletin, reducing the inspector force by two (2) positions. The two (2) inspectors, affected by the force reduction notices, displaced two (2) upgraded helpers. These two (2) displaced upgraded helpers exercised their right to return to helper positions and displaced the two (2) junior helpers. Claimant being the junior helper no longer retained a position as a result of the re-arrangement of the forces caused by the force reduction.

The claimant's name did not appear on the force reduction notice, and neither was the claimant's name on the force reduction list furnished the local committee.

Neither Rule 22(b) nor Rule 22(a) contains any penalty for a violation of the provisions of the rule. The request of Kays for a day for time not worked because of an alleged violation of Rule 22(b), is a request that the Board assess a penalty against the railroad not provided by the agreement.

Under the agreement, the carrier has contracted only for the payment for work actually performed. The carrier has not contracted for the payment of penalties. Rule 83 (c) provides:

> "It is understood these rules shall apply **only to those performing the work** as specified in this agreement in the Reclamation Plant and Maintenance of Equipment Dept."

The jurisdiction of the Board is limited to the interpretation of agreements. To award a penalty where the contract does not specifically contract a penalty for a specific violation of the contract under a strict construction of the contract, is in effect to write a new and different rule and contract for the parties than they have made, a matter in excess of the jurisdiction of the Board, and a void act because made in excess of the Board's lawful authority. As the claim is a request that the Board write a new rule for the parties and assess a penalty damage not provided by the contract and not agreed to by the railroad, an act in excess of the Board's authority under the law, the claim should be denied.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the railroad company respectfully requests the Second Division, National Railroad Adjustment Board, deny said claim, and grant said railroad company such other relief to which it may be entitled.

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.

Oiler (Carman Helper) Alonzo E. Kays claims he was improperly furloughed on Monday, June 28, 1954 because he was not given a proper furlough notice. Based thereon he asks for one day's pay at the applicable rate.

Kays was regularly employed as a freight car oiler by carrier at Glen Park, Kansas City, Missouri. His assignment was Saturday through Wednesday with Thursday and Friday as rest days. His tour of duty was from 11:00 P. M. to 7:00 A. M. On Monday, June 28, 1954, he was placed on furlough, having been displaced by a senior employe. He claims carrier should have given him a notice as required by Rule 22(b) of the parties' agreement.

The rules of the parties' effective agreement that are involved include 22(b), which relates to a "Reduction of Forces," and 32, which relates to "Notices."

There is no question but what Rule 32 was complied with as far as posting is concerned. The question raised relates to the sufficiency of certain bulletins posted, that is, did they meet the requirments of Rule 22(b)? The language of Rule 22(b), insofar as here material, is as follows: "If force is

to be reduced, seventy-two (72) hours' notice will be given the men affected before reduction is made and list will be furnished the local committee."

On Friday, June 25, 1954, carrier posted two bulletins. Nos. 762 and 764, and furnished the local committee copies thereof. Bulletin 762, "Subjects: Reduction in force," was addressed "To All Concerned" and abolished one position of car inspector and one position of car repairer at carrier's Glen Park train yards, effective on Monday, June 28, 1954. The bulletin shows the occupants of the respective positions being abolished by naming them.

On the same day carrier posted Bulletin 764, addressed "To All Concerned" stating there would be a reduction in force, effective Monday, June 28, 1954, by the abolishment of one position of lead car inspector and one position of car inspector at its Glen Park train yards, naming the occupants of the positions that were being abolished.

Both of these bulletins were posted more than 72 hours before the time the abolishing of the positions became effective.

There seems to be a difference of opinion between the parties as to which of these two bulletins ultimately resulted in claimant being placed on furlough by reason of other employes exercising their seniority. In order to decide the issue here presented we do not think that fact would make any difference because claimant was not the occupant of any of the positions that were abolished thereby.

On the property it was contended the notice lacked one day of being sufficient to meet the 72 hour requirement contained in Rule 22(b) because it was posted on Friday, June 25, 1954, one of claimant's rest days and while he was off duty by reason thereof. The seventy-two hour requirement in Rule 22(b) is in no way qualified by relating it to work days. We think the rule contemplates the seventy-two hour notice may be posted at any time and will be effective as to all employes affected thereby whether they are, at the time, either off or on duty. See Award 1469 of this Division.

It is the organization's thought that the words "men affected," as used in Rule 22(b), and of whom a list is to be furnished the local committee, includes all employes affected thereby whether because of the fact that their positions are being abolished or because of the fact that they are being displaced, in the exercise of ther seniority, by those whose positions are being abolished. Occupants of positions being abolished in a reduction of force by the carrier may either lay off or exercise seniority as per Rule 24 of the parties' agreement. See Rule 22(a) thereof. We think the language used in Rule 22(b) should be applied to the subject of the bulletin to which it relates. In that sense the "men affected" are those whose position are being abolished. If we were to extend its meaning beyond that subject, and relate it to all employes who might become affected because of the fact that the men whose positions were being abolished might have and would exercise their seniority, we would place on the carrier an almost impossible, and certainly an impractical requirement, for carrier would then have to anticipate what each employe was going to do. We do not think such was either the intent, meaning or purpose of the language used.

When the bulletins advised all employes concerned of what positions were being abolished, and who occupied them, carrier thereby sufficiently informed them of the possibility that they might be displaced from the positions they then held by the men, whose positions were being abolished, exercising their seniority. That is exactly what happened here. In such instances the rules do not require a seventy-two hour notice.

We think the bulletin posted, copies of which were furnished the local committee, fully met the requirements of 22(b). In view thereof we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2274

Rule 22 (b) requires that "seventy-two (72) hours' notice will be given the men affected before reduction is made and list will be furnished the local Committee."

The majority ignores the fact that the claimant was affected and that his name was not on the list furnished the local committee.

Oiler (Carman Helper) Alonzo E. Kays was notified at the end of his day's work June 27, 1954 that he was "laid off," therefore he was not given the required notice.

The so-called "abolition of positions" cannot be used to cause the removal of employes from service contrary to the proper furloughing provisions of Rule 22 (b).

We are constrained to dissent from this erroneous award.

George Wright

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner