

Award No. 3690

Docket No. 3511

2-C&O-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION AND HOCKING DIVISION)**

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the current agreement, particularly Rule 27 when it failed to notify or call Carmen W. H. Brenner and J. H. Murphy for service 7:00 A.M., June 17, 1958 at Peru, Indiana and junior carmen were called and worked on said date.

2. That accordingly the Carrier be ordered to compensate aforesaid employees eight (8) hours each at the applicable straight time rate of pay for June 17, 1958.

EMPLOYES' STATEMENT OF FACTS: On June 11, 1958 The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, at its Peru, Indiana Shops posted a bulletin, stating:

"All Car Department employees except Transportation Yard employees will be furloughed at close of their respective shifts today, June 11, 1958. This is to continue until flood situation clears up."

On June 16, 1958 the carrier determined that the flood water had receded sufficiently to resume work and inserted the following news item in the June 16th Peru Daily Tribune:

**C&O SHOPS BACK TO WORK
TUESDAY 7 A. M.**

"Chesapeake and Ohio Railway Shop employees here are to report to their regular assigned jobs at 7 A.M. Tuesday. The announcement was made Monday morning by L. S. Fidler, General Foreman of the Mechanical Department. Work at the shops was temporarily disrupted by flood conditions."

Carmen W. H. Brenner and J. H. Murphy, hereinafter referred to as the

interpretation of the rule which would insert language which the rule does not contain.

(4) The notice of restoration of forces in the instant case was handled in the same manner as all other similar restorations of forces and the method of notification had been accepted by all.

(5) Claimants could have worked on June 17 and other days during the furlough had they so desired.

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.

Parties to said dispute were given due notice of hearing thereon.

The claim is that the Carrier violated Rule 27 of the Agreement when it failed to notify Carmen Brenner and Murphy of the scheduled resumption of work after a furlough caused by flood conditions, and junior carmen were called and allowed to work before them.

On the preceding day the Carrier caused an announcement of work resumption to be published in the Peru Daily Tribune and to be made over the Peru radio station. One employe living at Kokomo was notified by telephone collect, pursuant to prior arrangement. All 167 shop craft employes reported for work except the two Claimants, who lived at Logansport, fourteen miles away, and received no direct notification via newspaper, radio, telephone or otherwise. They reported for work the next day.

Rule 27 relates to Reduction in Forces. Rule 27(C) provides:

"In the restoration of forces, senior laid off men will be given preference of re-employment if they can report for duty within a reasonable time, * * *".

An understanding of this Rule, effective February 2, 1942, provides that when shop craft employes are suspended the Carrier shall ascertain their home addresses and give them written notice that any change of address must be reported, and that

"When you stand for re-employment, you will be notified at your last known address, and if you fail to report in a reasonable time when called, your name will be stricken from the seniority roster", etc.

The statement "you will be notified at your last known address" is not ambiguous and requires no resort to practice for interpretation. Webster's New Collegiate Dictionary defines the verb "notify" as meaning "to give notice to; to inform". One is not informed,—notice is not given to him,—until he receives it. To discharge that burden the Carrier must know where it can reach the employe; this explains the home address arrangement.

The clear meaning of the provision is admitted by the Carrier when it states in its Oral Presentation:

6 "True, the Understanding of the rule states that employes will be notified at their last known address, but it does not specify any particular method or means of communication as the Employes contend". (Emphasis ours).

While it does not specify the method, it does specify the end result,—the employe must be informed. Its purpose is functional, not merely technical; it is to impart notice to the employe so that he can resume work as soon as reasonably possible. Therefore if he receives timely notice through another agency, as press or radio, or at another address than his home, he is not prejudiced.

At the outset the employes were informed by bulletin that the furlough would "continue until flood situation clears up," and the restoration of forces was announced in the usual manner, mainly by press and radio. The Carrier contends that this constitutes an established practice. The Organization disagrees; it contends that the rule is clear and that the absence of prior complaints of lack of notice does not establish a contrary practice.

4 The Carrier also contends that by practice non-resident employes are notified by telephone only on their prior agreement for collect calls, as instanced by the Kokomo resident's call, and says: "Had Brenner and Murphy desired to be notified by long distance telephone * * * it was incumbent on them to so arrange." But the Agreement does not so provide; it says only that the employes shall be notified at their last known addresses. The manner of notification is left entirely to the Carrier, but must be suited to the circumstances, since the object is prompt work resumption in the interests of all concerned, including seniority interests.

10 If the equities were to be considered different results might be necessitated for the two Claimants. On June 15 Claimant Brenner was informed by the assistant car foreman that the shop would probably reopen on the 17th, which might reasonably impose on him some obligation of further inquiry. But the Agreement places the burden of notification on the Carrier, which equitable considerations cannot shift.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1961.