

Award No. 3836

Docket No. 3786

2-PULLEW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement was violated when the Carrier used furloughed Electricians to perform extra work.

2. That the current agreement was violated when the Carrier terminated the services of furloughed Electricians J. T. Brent and E. R. Hendricks. That accordingly the Carrier be ordered to reinstate them with their seniority unimpaired and compensate them for any wage loss suffered by them.

EMPLOYES' STATEMENT OF FACTS: The carrier notified furloughed Electricians C. W. Comar, R. A. Reid, E. C. Wasnock, R. Fryer, J. C. Scheiderham, L. Meaney, J. T. Brent and E. R. Hendricks to report for extra work on April 30, May 1, 2, 3 and 4, 1959.

The carrier notified furloughed Electricians J. T. Brent and E. R. Hendricks that their services were terminated on May 7, 1959.

Due to this a claim was submitted requesting a hearing; a copy of the hearing record is submitted as Exhibit A.

The carrier denied our claim; a copy of this denial is submitted as Exhibit B.

We appealed this decision to Mr. Dodds, appeal officer; a copy of this appeal is submitted as Exhibit C.

Mr. Dodds denied our appeal; a copy of this denial is submitted as Exhibit D.

We notified Mr. Dodds that we intend to appeal his decision; a copy of this notice is submitted as Exhibit E.

This dispute has been handled in accordance with the agreement effective July 1, 1948, as subsequently amended, which is the controlling agreement in this dispute.

established the jobs filled by Electricians Comer, Reid, et al. Also, the Company has shown that Electricians Comer, Reid et al. properly were recalled from furlough under the applicable rules of the current agreement and assigned to perform work on April 30, May 1, 2, 3 and 4, 1959. Additionally, the Company has shown that the Company properly terminated the services of Brent and Hendricks when they failed to report for work as instructed or to furnish the Company a satisfactory explanation of their failure to report. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The organization's claim is without merit and 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.

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

Here as in Dockets 3781 and 3787 the propriety of procedure recalling from furlough for a job admittedly less than ten days duration is in issue. It arises differently because here it is contended by Carrier that even though the job be temporary the failure of the man on furlough to respond within 7 days as required by Rule 50 subjects him to the termination sanctions which are there provided.

A guide to the solution of the present controversy is found in Second Division Award 1912 where the Board per Referee Stone said:

"It has been held repeatedly by this Division that filling a temporary vacancy is not a restoration of forces. Award 1262. * * * In such case under the Reduction in Force Rule claimant was not required to return for the temporary vacancy and his name should be restored to the seniority roster."

In the instant case consistent with rulings in Dockets 3781 and 3787 the call back effort was outside the rules and consequently no obligation existed to respond to it. As in Award 1912 the termination order is void and restoration must be effected.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1961.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3836

What we have said in Dissents to Award Nos. 3903 and 3904 are applicable here insofar as establishing positions of ten days or less are concerned.

Rule 30 provides: "In the restoration of forces, furloughed employees shall be recalled * * * ." and that "An employee who fails to report for service within 7 calendar days * * * shall forfeit all seniority * * * ."

Nowhere in the agreement is provision made for furloughed employees to choose and pick when they will return to service. To the contrary Rule 50 is explicit that they be called back in seniority order.

The furloughed employees in this dispute after proper notification to them failed to report for service within the seven day requirement of Rule 30, and the Company therefore terminated their services.

If the organization desires to change the rules of the agreement this is not the tribunal to which the matter should be progressed. This Board does not have the power to rewrite agreement rules, we must interpret them as they have been agreed to by the parties.

The majority have erroneously interpreted the agreement rules.

For these reasons we dissent.

H. K. Hagerman

F. P. Butler

David H. Hicks

P. R. Humphreys

W. B. Jones