Award No. 3886

Docket No. 3286

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 21(b), when the following employes:

J. Bush	F. F. Azjac	J. J. Drennan
A. Eskridge	E. C. Mabry	R. L. Tippitt

hereinafter referred to as the Claimants, were furloughed without being given four (4) working days' notice.

2. That accordingly, the Carrier be ordered to compensate these Claimants in the amount of eight (8) hours each at the straight time rate for October 17, 1957 and all working days thereafter until they are properly furloughed under the terms of the controlling agreement.

EMPLOYES' STATEMENT OF FACTS: The following car helpers (claimants) were hired in the following seniority standing and their seniority dates show opposite their names:

"J. Bush	October 7, 1957
A. Eskridge	October 7, 1957
F. F. Zajac	October 9, 1957
E. C. Mabry	October 9, 1957
J. J. Drennan	October 11, 1957
R. L. Tippitt	October 11, 1957"

and continued in the capacity of car helpers at North Little Rock, Arkansas until quitting time October 16, 1957 when all were advised by their foreman that they were being furloughed at quitting time that date (October 16).

At the time these claimants were hired, furloughed forces at Little Rock had all been called to work and the claimants had been hired to position of

The employes base the claim on an alleged violation of Rule 21 (b). The rule is captioned "Reduction of Forces". Paragraph (b) reads as follows:

> "RULE 21 (b) If the force is to be reduced, four working days' notice will be given the men affected before reduction is made and lists will be furnished the general and local committees."

It is obvious the rule applies when forces are reduced and only when forces are reduced. If forces are not reduced, the rule has no application. The facts in the instant case are that the carrier was increasing the force at North Little Rock. A call was sent out for carmen helpers in accordance with paragraph (c) of Rule 21. Some carmen helpers responded immediately but not in the numbers required. Others were taking advantage of the 15 days in which to report and still protect their seniority. Since there was work to be performed and payroll authority to do the work, the force was increased in the amount authorized as quickly as possible. Since a sufficient number of carmen helpers did not report immediately, the carrier employed men from other crafts who desired the work. When the men were employed as carmen helpers, seniority as such started when pay started in accordance with Rule 25 (e). When the remaining carmen helpers responded to the call, claimants were displaced. The force was not reduced.

The officers and supervisors of this carrier are intimately familiar with Rule 21(b) requiring notice before reducing forces if, for no other reason, than the decision in Award No. 1500, a very expensive award growing out of a strike situation. The situation here is entirely different and the carrier is not trying to circumvent the rule or that award. No force reduction occurred and no notice was necessary.

The burden is on the employes to show a violation of the agreement. See Award No. 2580 of this Division. The carrier submits that the employes have not presented any facts in the instant claim which show a violation of the agreement. The employes have not shown that a force reduction occurred. Rule 21(b) upon which the claim is based is applicable only when forces are reduced. Since forces were not reduced, the rule is not applicable and claimants were not entitled to the notice required therein.

Certainly the claim lacks merit. Claimants were informed at the time employed that the work would be temporary and of a short and indefinite duration to fill in during the interim period. By accepting the work, claimants enjoyed earnings which would have been lost if the restrictions sought by this claim had been imposed on the carrier.

The employes have not shown any violation of the agreement, and, therefore, the claim must 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.

The evidence of record reveals that the numerical increase of the work force at North Little Rock, Arkansas was determined at October 1, 1957 and thereafter the process of filling the established number of positions continued through October 22. Pending completion of the maximum force, the claimants were employed for a short period. As the recalled furloughed employes gradually returned and filled out the designated work force, these claimants who were temporarily filling positions in the interim were furloughed without four days' notice.

Rule 21 (b) provides:

> "If the force is to be reduced, four working days' notice will be given the men affected before the reduction is made and lists will be furnished the general and local committees."

Reduction in force is the necessary pre-requisite to the notice required by the rule. We think it is reasonably clear from the record that the over-all size of the force had been determined before these claimants were employed, and that the size of the force was not thereafter reduced at any time pertinent to this dispute. We are accordingly compelled to find that the claim lacks support.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3886

The carrier admits that the work necessitated an increase in force. The record discloses that the claimants held no rights as carmen helpers prior to the dates they were employed to augment the force. Under Rule 25 (e) "The seniority of employes will date from the time pay starts when employed or re-employed." Thus the claimants acquired seniority as carmen helpers on the dates they were hired. Once an employe acquires seniority all rules of the governing agreement become applicable, therefore since Rule 21(b) is the only rule under which employes having seniority may be furloughed its terms are pertinent and should have been applied. Rule 21 (b) is clear and requires four days' notice. The only method by which this rule can be

changed is by negotiation. The necessity of complete compliance with the rules cannot be over-emphasized.

/s/ **Edward W. Wiesner**
Edward W. Wiesner

/s/ **C. E. Bagwell**
C. E. Bagwell

/s/ **T. E. Losey**
T. E. Losey

/s/ **E. J. McDermott**
E. J. McDermott

/s/ **James B. Zink**
James B. Zink