Award No. 5224
Docket No. 4997
2-C&EI-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago & Eastern Illinois Railroad violated the current working agreement when they did not give carman helper Mr. R. O. Woolsey five working days' notice that he was being furloughed as provided for in the agreement.

2. That accordingly, the Chicago & Eastern Illinois Railroad be ordered to compensate Mr. R. O. Woolsey for 8 hours per day at the straight time rate for November 16, 1964, November 17, 1964, November 18, 1964, November 19, 1964 and November 20, 1964, account the violation.

EMPLOYES' STATEMENT OF FACTS: On June 5, 1962, the Chicago & Eastern Illinois Railroad, hereinafter referred to as the carrier, signed an agreement stating that "Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice."

On November 13, 1964, due to a reduction in forces at Oaklawn Car Shop, foreman Charles L. Mitchell was displaced by a senior supervisor. Foreman Mitchell then exercised his seniority, (due to the reduction in force,) as a carman and asked to be placed on a car inspector job at the Wansford Yard, Monday through Friday, 7:00 A. M. to 3:00 P. M. with rest days Saturday and Sunday. This request was granted to Foreman Mitchell, and in the process, Mr. R. O. Woolsey, hereinafter referred to as the claimant, was furloughed from his position at Wansford Yard, Evansville, Indiana, due to the reduction in force at Oaklawn. The claimant was not given the five working days' notice as provided for in the June 5, 1962 Agreement.

This dispute has been handled with all officers of the carrier designated to handle disputes, including the highest officer, all of whom have declined to adjust it.

(1) During the period in question, there was no reduction in the carmen forces within claimant's seniority district, i.e. Evansville, Indiana, or, as a matter of fact, anywhere else on the system.

(2) Only if the Carrier had reduced the carmen forces at Evansville would it had been obligated to serve the five day advance notice. Such was not the case. (See Second Division Award No. 3704.)

(3) Finally, claimant's displacement and furlough **did not** result from a reduction in the carmen forces; therefore, the Carrier was under no obligation whatever to issue any advance notice.

This claim is void of any merit and must, therefore, be denied. We respectfully request your Board to so hold.

All data contained herein has been discussed with the representatives of the employes.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

In a reduction in force at Terre Haute, Indiana, Car Foreman McGilvrey's position was abolished. He exercised seniority and displaced Foreman Mitchell at Danville, Illinois, and the latter in turn displaced Claimant, a carman helper at Evansville, Indiana, in the exercise of his seniority. According to the record, Evansville is some 200 miles from Danville.

The claim is that Carrier violated applicable agreements by failing to give Claimant five working days' notice of his furlough. Rule 18 of the Shop Crafts Agreement deals with reduction in forces and prescribes that "Men affected under this rule will be given five (5) working days' notice and list will be furnished the local committee."

An agreement signed on July 16, 1962, provides that "Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' notice."

The only reduction in force mentioned in the record took place at Terre Haute and involved foremen, employes not within the scope of the Shop Crafts Agreement. There was no reduction in force of Carmen and so far as they are concerned, this is simply a routine case of displacement in the exercise of seniority. Claimant's relationship to the reduction in force of foremen at Terre Haute is too remote as a practical matter to bring the five-day notice provisions into play in this factual situation. The claim accordingly will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5224

Rule 25 of the current agreement reads in pertinent part:

"* * * * *

Employes promoted to supervisory positions with the company or to official positions with organization representing the employes will accumulate seniority at home point while in such position the same as if in continuous service at home point.

* * * * *"

Rule 18 reads in pertinent part:

"When it becomes necessary to reduce forces, the force at any point, or any department or subdivision thereof shall be reduced, seniority as per Rule 25 to govern.

* * * * *

Men affected under this rule will be given five (5) working days' notice and list will be furnished the local committee.

* * * * *"

The referee recognized that Rule 25 gives an employe promoted to a supervisory position away from his home point the right to accumulate seniority while in such position the same as if in continuous service at his home point. The referee erred in not recognizing that the provisions of Rule 25 made it mandatory that Rule 18 be applied in the same manner as if this furloughed foreman had been in continuous service at his home point. Rules 18 and 25 must be read together in arriving at the proper interpretation. The referee's failure to recognize Rule 18 has resulted in Award No. 5224 being palpably erroneous.

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