

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Agreement of April 24, 1970, when they deprived the employees named herein below, reporting for duty on June 15, 1971, four (4) hours pay at the straight time rate, who were affected by an emergency force reduction notice posted on the bulletin boards at Williamson, West Virginia between the hours of 2:45 p.m. and 3:15 p.m.

Carmen

Charles Trador
W. C. Pauley
R. E. Scott
R. E. Blackburn
W. Y. Duty
T. E. Bloomer
E. L. Robinette
Clayton West
Joseph Mammo
E. M. Farley
Ray Chafins
D. I. Runyon
C. M. Trivett
Fonso Elswick
Dewey Runyon
Twyman Francis
F. M. Colegrove
Joe Reed
F. R. May
Raymond Syck
Luther Young
Clifford Pinson
B. G. Marcum
Clifford Hunt
James W. Blackburn

Apprentice

L. J. Christian
R. E. Lockard
J. W. Young
Kenneth West
Donald Varney
D. L. Syck
Donald Helvey
J. R. Davis

Helper

W. J. Curry

2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate the above named employees in the amount of four (4) hours at the applicable straight time rate of pay for June 15, 1971.

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 employees 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.

On June 14, 1971 coal miners went on strike in the area where this claim arose. Consequently, the Carrier furloughed the claimants. The furlough notices were posted at 2:45 P.M. for the 3:00 P.M. shift at the Transportation Yard and at 3:00 P.M. for the 3:30 P.M. shift at the Shop Track. This is not contradicted in the Record, the Carrier stating: "All reasonable methods of communication, radio and telephone, were used to notify the employees of the furlough." The Organization claims that twelve named employees reported for work at the Transportation Yard for the 3:00 P.M. shift because they were not notified before they left home for work; twenty two named employees reported at the Shop Track for their 3:30 P.M. shift because they were not previously notified.

The parties agree that Article II of the April 24, 1970 Agreement is applicable. It provides that no advance notice is required for temporary force reductions in emergencies such as labor disputes provided that carrier's operations are suspended in whole or in part. This Article further provides that any affected employe who, "---reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position."

The Carrier contends that only three employees reported for work. The Organization submitted a statement dated December 8, 1972 signed by eleven employees to the effect that they had no prior notice, reported for work as usual and were told that they were furloughed. A statement of the same date was signed by twenty one employees to the same effect except that the notice was posted and no one was at the shop track to whom they could report.

There are conflicting claims as to how many employees appeared for work and no way to settle this from convincing proof in the Record. A reasonable approach from information in the Record leads to the following rationale: Although the Carrier stated that it attempted to notify all the employees to be furloughed, only eleven names were stated specifically as having been notified, in the Carrier's letter dated June 21, 1972. The Organization did not respond to this definite statement for approximately six months. We are inclined to credit the Carrier's statement that prior notice of furlough was given to these eleven named men. The general statement as to notice to other employees is not convincing. Primarily for this reason we would grant the claim of the remaining employees. In the absence of an explanation for six months' delay in rebutting the Carrier's statement that eleven named employees were notified, less weight is given to the fact that these eleven employees signed the statement to the contrary.

The claim shall be sustained as to the employees who signed the statements, Organization Exhibits A and B, and denied as to the employees named in the Carrier's letter, Carrier's Exhibit D.

A W A R D

Claim disposed of as stated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.

