Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7266
SECOND DIVISION Docket No. 7109
2-C&NW-MA-'77

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That under the current agreement the Chicago and North Western Transportation Co., hereinafter referred to as the Carrier at Oelwein, Ia., on January 6, 1975 improperly issued a three (3) working days' notice in lieu of the required five (5) working days' advance furlough notice to Machinists' C. Smith and D. Pint, hereinafter referred to as Claimants.

2. That, accordingly, Carrier be ordered to compensate each Claimant in the amount of two (2) additional days at the appropriate rate of pay, in the equivalent amount of time Carrier improperly abbreviated furlough notice to Claimants.

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.

The record herein is clear that Claimants were "bumped" by Senior employes and were not furloughed as a direct result of a reduction of forces. Under such circumstances, the five day advance furlough notice was not required. Second Division Awards 6859 and 2274. The specific bulletin forms relied upon by the Organization were not applicable to Claimants in this situation.

A W A R D

Claim denied.

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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 5th day of April, 1977.

LABOR MEMBER'S DISSENT TO AWARD NO. 7266 - DOCKET NO. 7109

The Majority in its decision totally ignores the rules of the Agreement specifically negotiated by the Parties to govern the proper procedures and bulletin forms in effecting job abolishments that would result in force reductions. Also ignored with apparent disdain were all of the facts of record portraying the proper previous adherences to these rules and even subsequent proper procedures under these rules.

The erroneous finding that those negotiated unambiguous rules were not applicable was cavalierly stated as:

> "The record herein is clear that Claimants were 'bumped' by Senior employes and were not furloughed as a direct result of a reduction of forces. Under such circumstances, the five day advance furlough notice was not required. Second Division Awards 6859 and 2274. The specific bulletin forms relied upon by the Organization are not applicable to Claimants in this situation."

It is noted that the Majority has "pride in authorship" in quoting its own Award No. 6859 which was rendered under completely different rule language as he was made well aware of in the facts of record.

The agreement language on this property states in pertinent part:

> "November 7, 1949***'It was agreed that in posting notices of force reductions under provisions of rule 25, federated crafts' schedule, bulletins will indicate that the effective date of the reduction as it affects each individual employe is to

> "be based on the five working days of the individuals assignment.***" (Underscoring added.)

The exact Bulletin forms to be utilized were then reproduced and attached within the Schedule Agreement on pages 140-141. These forms had without exception been used since the effective date in 1949 - 26 years!

These forms required the exact positions to be abolished, allowed "employes who are affected and not included in the force reduction may place themselves**". So the Agreement specifically contemplated and included the listing of all employes affected by job abolishments leading to eventual force reduction with those who were furloughed being specifically designated and with at least five working days advance notice.

The Carrier even recognized their mistake by belatedly posting a bulletin as required by the Agreement and stating:

> "This will serve as the notice that specifically the following employes will be laid off at the close of their shift on Friday, Jan. 10, 1975."

Still this Majority inexplicably states that this was being "bumped" and not a "reduction". Such preposterous incorrect positing certainly had to be suspect since its an insult to any intelligent reasoning.

As stated hereinbefore apparently this Majority was determined to follow his previous holdings under an entirely differen agreement in a posture of lumping together "apples and oranges"

or "field mice and elephants". Such deliberate attempts at re-writing or deminishing agreements are not in the province of this Board or this Majority as has been held innumerable times. Not to burden the record with all of them, Third Division Award No. 20383 by Referee Dorsey is to the point wherein it is stated:

> "This Board has no equity powers (jurisdiction) vested by the Railway Labor Act (RLA). In the instant dispute the Board's jurisdiction is confined to the interpretation or application of agreements (between the parties herein) concerning rates of pay, rules, or working conditions! RLA, Section 3, First (i). It matters not what stranger agreements provide for; nor, does industry practice when the wording of the confronting agreement is not ambiguous; nor, what may be our sense of equity.
>
> It is hornbook that this Board may not enlarge upon or diminish the terms of a collective bargaining agreement. If either party finds the terms of such an agreement not to its liking it must seek a remedy through collective bargaining. RLA Section 6."

It can only be concluded that for inexplicable reasons the Majority was grasping vainly for an excuse to deny this case irrespective of common sense and agreement language.

We vigorously dissent.

G. R. DeHague
Labor Member