Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7377
SECOND DIVISION Docket No. 7297
2-SLSW-CM-'77

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 45, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That the St. Louis Southwestern Railway Company violated the terms of the controlling agreement when it furloughed Carmen Apprentices R. Smith, O. R. Davis, J. W. Kentle, G. Moore, Jr., R. D. Lunsford and L. F. Qualls without five (5) days advance notice.

2. That the St. Louis Southwestern Railway Company be ordered to compensate Carmen Apprentices R. Smith, O. R. Davis, J. W. Kentle, G. Moore, Jr., R. D. Lunsford, and L. F. Qualls in the amount of forty (40) hours' pay each at the pro rata rate.

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.

On December 17, 1974, Carrier posted Bulletin No. 659 stating that effective 7:00 a.m., December 24, 1974, 16 carmen positions would be abolished. The notice, in compliance with Rule 18 of the Carmen's Agreement, listed the names of the 9 employees involved, the remaining 7 positions having previously been blanked. Bulletin No. 659 was addressed to "Carmen and F. C. Welder," listed by number the positions to be abolished and the 9 individuals then occupying these positions.

On December 24, 1974, the six carmen apprentices, hereinafter referred to as Claimants, were notified in writing that they would be furloughed effective 7:00 a.m., December 26, 1974, "account of being displaced by senior employees".

The Organization, on claimants' behalf, contends that the failure to give the named apprentices five (5) working days notice before the effective date of their furlough was in violation of Rule 18-3, which reads as follows:

> "If the force is to be reduced, four (4) days' notice* will be given to the employees affected before reduction is made, and list will be furnished the local committee."

The Organization further contends that apprentices, by virtue of their training schedules, have never been subject to bid and job assignment rules (Rule 12) and, therefore, are not subject to displacement under Rule 21 of the Agreement, which reads, in part, as follows:

> "21-2. When an employee is displaced through no fault of his own, he shall be permitted to displace any employee junior to him in his seniority district provided written application is made within five (5) days to the officer in charge, with copy to the Local Committee, otherwise he will be considered furloughed."

In any event, Organization maintains, the Local Committee never received written applications by the displaced employees to displace the claimants. Furthermore, the argument runs, since the Seniority Rule (Rule 20) does not establish a seniority district for apprentices, apprentices are not subject to the exercise of seniority rights as outlined in Rule 21-2.

Carrier, on the other hand, asserts that its posted Bulletin No. 659 is in compliance with the requirement of Rule 18-3 quoted above, in providing a 5-day notice to employees affected; that these affected employees exercised their seniority in accordance with Rule 21-2 as a result of which exercise, they displaced the most junior employees--the six apprentice claimants. Carrier states that some of the carmen affected by the December 17 furlough notice were upgraded apprentices temporarily promoted to fill carmen positions that were being abolished. After notification that their positions were being abolished, these upgraded apprentices notified Carrier of their desire to revert to apprentice status and displace junior apprentices effective December 24, in line with Rule 21-2. Rule 21-2, Carrier insists, permits temporarily promoted apprentices to return to their former position.

Carrier adds that no further furlough notice, due to subsequent bumping or displacement, was required and that the Agreement was not violated thereby.

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*/ Rule 18-3 was modified by Article III of the June 5, 1962 Agreement between the parties to require five (5) working days' notice before "the abolishment of a position or reduction in force".

Rule 18-3, as modified by Article II of the June 5, 1962 Agreement, explicitly states that "if the force is to be reduced", five (5) days' notice will be given "to the employees affected before reduction is made". In the case before us, the question is: were claimants "employees affected" so as to receive the five days' notice required by Rule 18-3?

We hold that claimants were not so entitled and that the Carrier did not violate Rule 18-3.

Prior Board rulings in similar situations involving similar rules have generally come to the same conclusion; namely, that the five-day notice is not required for employees bumped or displaced by senior employees who have received the requisite notice of a reduction in force or abolition of their positions.

In denying the claim, the Board in Second Division Award No. 2274 (Wenke) stated:

> "It is the Organization's thought that the words 'men affected', as used in Rule 22(b), and of whom a list is to be furnished the local committee, includes all employees affected thereby whether because of the fact that their positions are being abolished or because of the fact that they are being displaced, in the exercise of their seniority, by those whose positions are being abolished. Occupations of positions being abolished in a reduction of force by the carrier may either lay off or exercise seniority as per Rule 24 of the parties' agreement. See Rule 22(a) thereof. We think the language used in Rule 22(b) should be applied to the subject of the bulletin to which it relates. In that sense the 'men affected' are those whose positions are being abolished. If we were to extend its meaning beyond that subject, and relate it to all employees who might become affected because of the fact that the men whose positions were being abolished might have and would exercise their seniority, we would place on the Carrier an almost impossible, and certainly an impractical requirement, for Carrier would then have to anticipate what each employee was going to do. We do not think such as either the intent, meaning or purpose of the language used."

Second Division Award 4089 (Johnson) followed the rationale of Award 2274 finding:

> "The Rules contain no such provision; nor do they require seven days' notice to employees bumped, or seven days' delay before the senior employees can receive the benefit of their seniority rights.

"The causes of Nation's and Beal's displacements were the respective elections by two senior employees to bump them. Since these causes intervened between them, the force reduction and the displacements do not constitute cause and effect, and these claimants cannot be held to have been affected by the reduction itself. If they were affected by it, within the meaning of the rule, so were the employees they may have then displaced, and so on indefinitely. We necessarily hold that the employees affected, within the meaning of Rule 16(b), were those directly concerned.

This concerns with Awards 2274 and 3591, in which this Division also held that notice of the positions abolished is notice to all other employees of their displacement by their seniors, if any, among the employees named."

See also Second Division Award Nos. 5547 (Dugan), 6805 (Eischen), and 6859 (Zumas) to the same effect. This Board is of the opinion that the reasoning of these awards is sound and concurs in the results.

A W A R D

Claim denied.

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 14th day of October, 1977.