

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ Chicago, West Pullman and Southern Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, West Pullman and Southern Railroad Company violated the terms and conditions of Rule 19 of the current working Agreement when they furloughed Carman Frank Vranjkovic, Charles O'Brien, Andrew Nowak, Kenneth Smoot, Gary Long and David Doud. Further, the Railroad Company also violated the time limit provision of the August 21, 1954 Agreement when they failed to give reasons for their denial of the claim.
2. That the Chicago, West Pullman and Southern Railroad Company be ordered to compensate the above named six (6) Carman eight (8) hours pay each at the pro rata rate of pay for each day commencing on March 28, 1980 and continuing through the required five (5) working days' notice as required by the Agreement.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 this dispute, the Organization raises the procedural point that the Carrier failed to state a reason in its reply to the claim, as required by Article V of the August 21, 1954 Agreement, which reads in part as follows:

"Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."

Such Carrier response included the following:

"On March 23, 1980, this Carrier was notified by Wisconsin Steel Works, our largest customer that their plant, immediately, would be shut down."

Under the circumstances, the Board finds that this statement meets the requirement of Article V, even though it makes no specific reference to a particular rule. While it may have found the reason insufficient, the Organization was made fully aware of the basis for the Carrier's action.

The Organization states without contradiction that the Claimants (along with all other employees, according to the Carrier) were furloughed with virtually no advance notice.

Rule 19, as amended, reads as follows:

"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.

The Carrier admits to not granting the required five days' notice but defends its action based upon an undisputed total shutdown of its business at the time under "emergency" conditions. There is no evidence that the Carrier withheld notice to its employees for any period after learning of the cessation of the need for its services.

The concept is reasonably founded that an "emergency" of the nature here involved may abrogate a notice requirement. "Notice" implies a period of time during which employees continue to work while facing reassignment or furlough. Conditions in this instance made such period of continued work impossible of fulfillment.

The Carrier cited no other basis for its action, but the Board finds this sufficient to justify its action. The Board will not direct the enforcement of a notice period when there appears to have been no way for it to be provided, given the sudden and total cessation of the Carrier's business.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of March, 1982