

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

Parties to Dispute: (International Brotherhood of Electrical Workers, AFL-CIO
(
(The Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated the Force Reduction and Job Abolishment - Rule 22 of the April 1, 1945 controlling agreement as amended in Article III - Advanced Notice Requirements of the National Agreement signed June 5, 1962 when they denied proper notice to Electrician J. W. Anderson, Sr. placing him in furloughed status, August 23, 1979, and, further violated the rule when the Local Committee was not furnished a list of the affected employees.
2. That, accordingly, The Terminal Railroad Association of St. Louis be ordered to compensate Electrician J. W. Anderson, Sr., eight (8) hours at the straight time rate for five (5) day work week commencing Saturday, August 25, 1979 and continuous.

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.

There are certain facts that should be noted as background. In 1978, two employees in the B&B department left the service of the Carrier. Mr. H. B. Godrick resigned on March 17, 1978, C. F. Hofer retired October 16, 1978 and E. G. Jesel retired November 1, 1978. On December 7, 1978, Employee M. J. Gibson was assigned to the Hofer position. On April 10, 1979, Jesel's position was advertised and Gibson was assigned. The Claimant was assigned to the vacancy created when Gibson moved from the position formerly held by Hofer to the position formerly held by Jesel. It is important to note that employee Godrick was not replaced. On August 17, 1979, the Carrier issued the following bulletin:

"Bulletin No. 606

To All Concerned:

Effective with the close of work Thursday, August 23, 1979, the B&B Electrical forces under Electrical Foreman, J. W. Shoemaker will be reduced by one (1) Electrician, working

"hours 8:00 A.M. to 4:30 P.M., Monday through Friday.

H.L. Vines
Supt. Bridges and Bldgs.

HLV:bns
cc: Mr. D. G. Davis, General Chairman
Mr. Geo. E. Smith, Asst. General Chairman
Mr. J. R. Bowman,"

Subsequent to the bulletin, the Carrier verbally notified Electrician Gibson that he was the affected party and he was advised to exercise his seniority accordingly. The Claimant was bumped by Mr. Gibson and furloughed.

Essentially, the Organization argues that the Agreement was violated when the Claimant was furloughed, for two reasons. First, the notice of August 17 does not specify or name any affected employee. Second, the Agreement was violated when the Claimant was furloughed because when he was furloughed there still remained one vacancy in the B&B electrical force (presumably the position vacated by Godrick approximately 17 months before). The Organization believe that an employee can only be placed in a furloughed status when the Carrier no longer "provided within their force a position upon which the employee can place." The fact that, in their opinion, an open position existed at the time of furlough establishes that the Claimant should have been allowed to fill it. The fact that he was not establishes that he was improperly furloughed.

The Carrier argues that the fact that the three electricians retired during the calendar year 1978 and were not replaced by the addition of a like number of employees has no bearing on this case whatsoever as it did not violate any agreement provision or practices. Regarding the issue of notice, the Carrier points out in their submission that the practice followed in the instant case is consistent with past practice between the parties for at least 38 years. Moreover, in this regard they argue that electrician Gibson was properly notified of the force reduction.

After considering the evidence, it is the decision of the Board that the Carrier has not violated the Agreement. The Organization alleges that the Agreement was violated for two reasons. One, that there was a vacant position at the time of the Claimant's furlough and two, that the notice did not specify the individual affected. The Organization's arguments regarding these reasons are not persuasive. First there is nothing in the rule relied upon by the Organization either in an expressed or implied sense which would require the Carrier to fill a position that had been vacant for 17 months in order to avoid the Claimant's layoff. There is nothing in the Agreement provisions cited to us which would require the Claimant to fill the position which was vacated many months before. If the Organization wishes to establish a rule violation then they must convincingly establish that the Carrier's procedure is clearly prohibited by the expressed language of the Agreement or by past practice. There just simply is no language in this Agreement which requires the Carrier to do what the Organization says they must. The only caveat in the Agreement regarding the Carrier's right to abolish positions are the notice requirements of Rule 22 and Article 3. Second, it is our decision that proper notice was given. The Carrier's argument on past practice are convincing that an individual need not be named in an abolishment notice. Moreover, the Claimant is not required to receive five days notice as it was not his position being reduced. The Board has previously

stated that similar contractual provisions and facts that advance notice is not required to an employee who is subject to seniority displacement and subsequently furloughed.

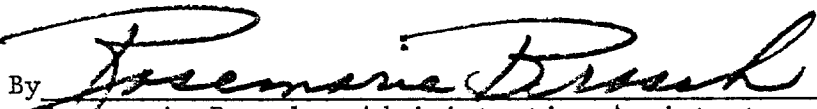
In summary, it is the conclusion of the Board that the Organization has not fulfilled its burden of showing that the Carrier violated provisions of the Agreement.

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 28th day of July, 1982.