Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9721
SECOND DIVISION Docket No. 9238
2-CMSP&P-EW-'83

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current Agreement when on November 1, 1979 it improperly furloughed Electricians W. Stetson, W. Gilbertson, A. Lilley, R. Mager and K. Mager without proper notice as stipulated in the current Agreement.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate the above referred to Electricians for all compensation that they would have earned had they been properly notified in accordance with the Agreement. The amount of time lost by each Electrician as a result of the violation mentioned herein was three (3) days of compensation at the prevailing 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 employes 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.

This dispute concerns the failure of Carrier to give five days' advance notice to Claimants, Electricians W. Stetson, W. Gilbertson, A. Lilley, R. Mager and K. Mager when their positions were furloughed on November 1, 1979, account of an embargo of certain of Carrier's lines ordered by the United States District Court for the Northern District of Illinois, Eastern District (Bankruptcy Court) via Order No. 220 C issued on October 26, 1979. The Organization contends that the lack of five days' notice violated Rule 23 of the Agreement. That Rule reads, in relevant part:

"Whenever it is practicable to do so, five (5) days' notice will be given men affected before reduction in force is made and lists showing employes to be laid off, will be furnished local committees. The ratio of apprentices to be maintained."

The Organization points out that the embargo order was issued five days' before it was to take effect. Thus, according to the Organization, Carrier could have complied with Rule 23 if it had promptly notified the Claimants of the impending furlough.

In addition, the Organization maintains that not all of Carrier's lines were affected by the embargo order. In the Organization's view, Carrier has the burden of proving that the Claimants were assigned to the embargoed lines. As the Organization sees it, Carrier has failed to meet this burden and, therefore, the claim should be sustained on these grounds alone.

Finally, the Organization argues that the embargo ordered on October 26, 1979 did not constitute an emergency so as to relieve Carrier from the five days' advance notice requirement. Accordingly, the Organization asks that the claim be sustained and that the Claimants be appropriately compensated for Carrier's failure to give them the full five days' notice as required by Rule 23.

Carrier, on the other hand, maintains that the embargo did, in fact, constitute an emergency so as to exempt it from complying with the provisions of Rule 23 in this case. Carrier argues that the Interstate Commerce Commission (ICC) has previously ruled that an embargo or a threatened embargo constitutes an emergency. Thus, Carrier concludes it did not have to comply with the provisions of Rule 23.

In addition, Carrier contends that it simply was not practicable for it to give five days' advance notice to the employees who were about to be furloughed. In fact, Carrier points out that it did give some advance notice to Claimants. Thus, Carrier concludes that even if the embargo does not constitute an emergency, it did comply with the provisions of Rule 23.

While we have previously decided that the embargo ordered on October 26, 1979 did not constitute an emergency (see Third Division Award No. 24446), we must nonetheless deny the claim. This is so because here, as opposed to the prior case, Carrier was required to give five days' advance notice of reductions in force only "Whenever it is practicable to do so". The term "practicable" suggests feasibility. It does not require the performance of an act under any and all circumstances. Here the embargo order was signed on Friday afternoon, October 26, 1979. It was to take effect on November 1, 1979, five days' later. Clearly, it would have been "impracticable" to immediately notify the Claimants and other affected employees.

Moreover, the record reveals that Carrier did give two days' advance notice to the Claimants. Thus, Carrier did comply with Rule 23 to the extent that it was "practicable to do so." Accordingly, under the language of this Agreement, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 16th day of November 1983.