Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10766
SECOND DIVISION Docket No. 10363
2-B&O-CM-'86

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Baltimore & Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Baltimore & Ohio Railroad Company violated the terms of the controlling Agreement, specifically Rule 24, when on the date of July 20, 1982, claimants herein, Carmen at Washington, Indiana, were subjected to and placed in furloughed status without being provided and afforded their contractual right to a 'five working days advance notice' of such furlough.

2. That this claim be considered as a running and/or continuous claim until such time as claimants contractual rights to the 'mandatory' 'five working days advance notice' of furlough is appeased and adhered to.

3. That Carrier be ordered to compensate each of the following claimants for eight (8) hours per day, five (5) days per week at the straight time rate in effect from the date of July 20, 1982, up to and including the date of resolution of this dispute, and additionally, that claimants be made whole for any and all benefit losses they may have suffered as a result of such arbitrary furlough and still further, that they be made whole for any and all additional monetary losses, i.e., overtime, etc: Claimants: Robert E. Clark, Eugene Matteson, Ralph R. McCool, James A. Mahan, Kenneth Purcell, Richard D. Potter, John D. Clements, Robert A. Beaman and James E. Winiger."

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.

In July, 1982, under a systemwide reduction of force, the Carrier reduced its forces at Washington, Indiana. The Carrier posted a Notice of Force Reduction that stated to be by authority of Rule 24 of the Controlling Agreement. The bulletin was posted on July 13, 1982 and stated:

> "Effective Tuesday, July 20, 1982, 7:00 A.M., the following positions are abolished. Employees effected will be governed by provisions of Rule 24."

The bulletin then listed the names of the nine junior Carmen who are the Claimants here.

The argument is made by the Organization that the notice was improperly given and was violating the Rule, hence a Claim is made for continuing liability of the Carrier. The argument of the Organization is centered on the grammatical construction of the Rule. The Rule, at Section 24(b) states in pertinent part:

> "Five working days' advance notice will be given to employes affected before the abolishment of positions or reduction in force..."

The argument is that five working days' notice must be given if there is an abolishment of positions or five day's notice must be given if there is a reduction in force. Because Carrier's notice only addressed the abolishment of positions, the Claim is that another five days' notice must be given because of the reduction in force. This argument is further buttressed by Rule 24(j) which states:

> "Except in cases of emergency force reductions as covered by Section (b) (2) and (b) (3) of this rule, the following STANDARD FORM will be used to notify all concerned of position abolishments and force reductions."

The argument here is that the standard form is to be used if either position abolishments or reductions in force are to occur, essentially the same construction given to 24(b).

The Organization argues that the listing of nine positions for abolishment with the names of the incumbents does not serve the purpose of the notice requirements for reductions in force.

The five working days can be read as modifying either the necessary notice for the abolishment of positions or for the reduction in force. The Carrier points out that it can have an abolishment of positions and not have to furlough any employees. This could happen if jobs were being reassigned or work duties were being redefined within the context of the Agreement. In such a situation it would be incumbent upon the employee whose position had been abolished to keep abreast of the bulletin board to be able to exercise his seniority to bid on a new position or to exercise his seniority to bump into a

position if so qualified. In the situation of a reduction in force, the effected employee would be wise to keep abreast of the bulletin board to see if there were any vacant positions on which he could bid or whether there were junior employees whose positions he could bump onto.

A significant difference in the two situations, abolishment of positions and reduction in force, could be that in the latter there will be more effected employees than there are positions. Naturally this will mean that the junior employee(s) will have nowhere to bid or to bump. In either circumstance the five day notice provision will serve the same purpose, the purpose of alerting the effected employee to the fact that his position will be abolished. If the announcement is for a reduction in force, the senior employees will not be effected. The junior employee will be effected in either case and to him it makes no difference if the cut comes from abolition of his position or from a diminution of the active work force because he will be bumped in the latter case. The senior employee will only be effected if the position he occupies at the time of the announcement is to be abolished.

The Carrier in this instance announced that the positions of the junior employees would be abolished. It named the incumbents of those positions. The effect on the Claimants would have been the same if the Carrier had announced that a reduction in force of the their number would be made.

Collective bargaining contracts must be scrutinized with a rule of reason. Those charged with the interpretation of such Agreements must be careful to uphold the meaning of the provision. Since the posting of the positions to be abolished completely filled the intent of the Rule, we must find that the requirement of a redundant posting of a notice that the force would be reduced by an exact number would serve no purpose. We find that the posting of the abolition of the junior positions complied with the Rule.

The Carrier pointed out to us that the predecessor Rule to the current Agreement contained a provision that required individual notices to the effected employees. This provision was changed through negotiation, effective March 1, 1980, to the present Rule which eliminated the need to individual notice.

Based upon these reasons we will 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 5th day of March 1986.