Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10853
SECOND DIVISION Docket No. 10130
2-UPFE-CM-'86

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Union Pacific Fruit Express Company

Dispute: Claim of Employes:

1. That the Union Pacific Fruit Express Company violated the controlling agreement particularly Rule 21(a), when Carmen M. F. Simons and N. R. Simons were denied the right to place themselves on carmen's jobs - 11:00 p.m. to 7:00 a.m. shift - January 5, 6, 7, and 8, 1982, Pocatello, Idaho.

2. That accordingly, the Union Pacific Fruit Express Company be ordered to compensate Carman M. F. Simons and N. R. Simons in the amount of eight (8) hours each at the regular rate for each of the four days held out of service because of Carrier's failure to properly notify them, thus depriving them of their right to exercise their seniority under Rule 21(a).

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.

The two Claimants are Carmen in the Carrier's Pocatello, Idaho, Shop. Along with other employees there, they were notified by a January 4, 1982, bulletin board posting that the Shop would be closed on January 5 and 6. The posting is quoted in its entirety below.

"NOTICE

Due to the current snowstorm and other adverse weather conditions, the Shop will be closed January 5 and 6.

All employes should report for work on January 7 at regular time".

On January 6, 1982, employees were advised by telephone that due to the weather the shop would also remain closed on January 7 and 8. The Carrier maintained a minimum force during the emergency suspension of work to protect loaded refrigerator cars passing through the yards. Such minimum force consisted of two employees junior to the Claimants.

According to the Organization, the Carrier was obligated to notify employees of the two positions which remained available during the 4-day emergency reduction in force. It further asserts that the Carrier violated the Claimants seniority rights under Rule 21(a) by circumventing them and assigning available work on each of the four days (January 5 through 9) to less senior employees. Rule 21(a) is quoted below:

"Rule 21

EXERCISE OF SENIORITY

(a). Employees whose jobs are disturbed by reduction in force or by abolition of jobs or through re-arrangement of jobs caused by change in work, shall have the right to place themselves on such jobs as their seniority and qualifications entitle them to".

The Carrier maintains that Rule 19 precludes any notice requirements because the emergency reduction in force was only temporary. Rule 19 states in pertinent part:

"NOTE 2:

(a). Rules, agreements or practices, however established, that require advance notice to employes before temporarily abolishing positions or making temporary force reduction are hereby modified to eliminate any requirements for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension or operations".

The Carrier also feels that Rule 21(a) is not applicable, especially since Rule 19 modifies "agreements or practices" with regard to reductions in force. It also argues that the Claimants must have understood there were two

positions still available, as the January 4 posting merely said the "Shop" would be closed - - - it did not mention the "Yard". And the two positions which remained available during the temporary reduction in force were in the Yard, not the Shop. Thus, the Carrier argues, the Claimants chose to ignore the available positions and later filed their Claim for lost income opportunity.

Rule 19 focuses upon advance notice to employees of reductions in force. It says nothing of employees' seniority rights. Thus, a temporary reduction in force for emergency purposes obviates any employer contractual obligation to give advance notice of same. Rule 19 does not, however, obviate the employer's obligation to comply with the spirit and letter of Rule 21(a).

Rule 21(a) reflects the parties' mutual intent to give senior employees preferential treatment over junior employees with regard to available work. It applies to employees whose jobs are disturbed by "reduction in force," but does not specify that the reduction must be permanent. We therefore conclude that the Rule applies in cases of temporary reduction in force as well. Indeed, if the parties wished to carve out an exclusion for temporary reductions in force, they would have so stated.

Moreover, we are not persuaded by the Carrier's argument that the Claimants must have known the two positions were available. Even though the January 4, 1982, posting said "the shop" will be closed, it also directed "All employees" to return to work on January 7. Thus, it was reasonable for the Claimants to conclude that there was no work available for them.

On balance, we conclude that the Carrier violated Rule 21(a) in its failure to notify employees of the two available positions, and that its reliance on Rule 19 as a basis for not doing so was erroneous.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.