Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10933
SECOND DIVISION Docket No. 9953
2-GTW-CM-'86

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Grand Trunk Western Railroad Company

Dispute: Claim of Employes:

1. That the Grand Trunk Western Railroad Company violated the controlling Agreement, when they improperly furloughed on January 20, 1982, by failing to notify employes not to report for work.

2. That accordingly, Grand Trunk Western Railroad Company be ordered to compensate employes listed as claimants in Employes' Exhibit "D", at four (4) hours pay, straight time rate, in accordance with Article II, "Force Reduction Rule", dated April 24, 1970.

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.

On January 19, 1982 at approximately 11:15 P.M. a large section of the Carrier's Freight Car Repair Shop at Port Huron Michigan caught fire, causing damage in excess of one million dollars. The reported outdoor temperature at the time was 15-18 degrees and at the height of the fire, all electrical power, phone service, and heat was cut off throughout the complex, including the Shop Office where all of the Shop personnel records were kept.

Approximately 215 regularly assigned employes worked at this facility, including Claimants, and all were assigned to a single eight hour shift commencing at 7:30 A.M. Monday through Friday.

Both parties agree that this was an emergency condition as contemplated under Article II, "Force Reduction Rule", of the Agreement dated April 24, 1970.

That Rule reads:

> "(a) Rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement 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 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 of operations. It is further understood and agreed that notwithstanding the forgoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.
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> (b) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees."

The Carrier notified its employes not to report to work by having two local radio stations broadcast this information every 15 minutes from approximately 5:30 A.M. on.

The 14 Claimants involved did not receive notice and did report for work at 7 A.M., at which time they were sent home without pay.

The question is whether the radio notices constituted "adequate and appropriate" notice in the context of the Agreement as applied to this particular emergency circumstance.

The Carriers contend that the radio station broadcasts constituted adequate and appropriate notification, that telephoning each employe is not required and was not possible because of the fire and because all but two of the Claimants did not have their current telephone number on file with the Carrier.

Both the Carrier and the Organization cite previous cases where other forms of notification were used, mainly posted notices. The Organization contends that telephoning could have been reasonably accomplished by use of the telephone directory.

Carrier's arguments are at first persuasive, however, the Rule clearly does contemplate "inappropriate, inadequate or no notice" since it provides a four hour payment due to absence of notice. The Organization also uncontrovertedly asserts the historic context in which this Rule was adopted. Essentially, that context shows that prior to this Rule, Carriers had to provide considerably more notice to their employes, emergency or not. Effectively, that meant that they had to make considerable payments to their employes in the event of an emergency such as the instant case.

The Rule clearly provides for a Carrier obligation to the employes of four hours pay if the Carrier fails to effect proper notice. The burden of notice is on the Carrier. The Carrier did not assert an existing policy.

The Claimants involved indicated the absence of notice with their feet. They showed up for work at the proper time. They are entitled to compensation in accordance with the Agreement.

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 23rd day of July 1986.