

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement Rule 22 in particular, Electrician Armin Williams was prematurely furloughed effective the close of his shift on May 16, 1982.

2. That accordingly, the Burlington Northern Railroad be ordered to compensate the aforementioned Armin Williams eight (8) hours pay per day at the pro rata rate for a period of eight (8) days beginning May 17, 1982 and continuing through May 24, 1982.

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 Claimant, an Electrician at the Carrier's Diesel Repair facilities in Havre, Montana, was given notice on May 11, 1982, that due to force reduction he was to be furloughed at the close of his shift on May 16, 1982. Two additional Electricians were given like notices. The three men were the three junior Electricians employed at the Havre Diesel facility, with the Claimant being the senior of the three.

The positions occupied by these men were needed positions, so the Carrier also posted a notice on May 11, 1982, advising that three Electricians' positions (employes senior to those furloughed) would be abolished at the close of the shift on May 16, 1982. Under the Agreement, those senior Electricians had five days within which to exercise their seniority and displace junior employes still in service. Thus, the abolishment of the three Electricians' positions was to coincide with the furlough of the three junior Electricians, and the three youngest employes remaining in service would be required to take the rate of the job to which they were assigned.

The Organization asserts that the Claimant was prematurely furloughed with the close of his shift on May 16, 1982, since it denied him the right to exercise his seniority by continuing to work on his bulletin assignment until displaced. His position was not filled by a senior employee until May 21, 1982. Moreover, the Organization notes, due to a variety of circumstances involving the medical leave of a senior Electrician, the Claimant's own seniority would have allowed him to hold that vacant position until May 24, 1982. Simply put, the Claimant owned a bulletined position which was not abolished and, in violation of Rule 22, he was prematurely laid off prior to being displaced by a senior employee. The Organization asserts that such action was in violation of Rule 22 and in contrast to long standing past practice.

The Carrier also relies on Rule 22 in support of its position. It is quoted in pertinent part below:

"Rule 22. REDUCING HOURS OR FORCE

(a) When it becomes necessary to reduce expenses, forces will be reduced. When forces are reduced, employees will be laid off in reverse order of their seniority, employees remaining in service to take the rate of the job to which assigned ...

(b) Not less than five (5) working days' notice will be given before forces are reduced."

(g) The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping,' will be permitted only when existing assignments are cancelled, in which case the employee affected may, within five (5) days, displace any employee his junior whose position he is qualified to fill."

The Carrier argues that its furloughing the Claimant, together with two other Electricians, by giving them a five day notice and further abolishing three other positions by a separate notice, is a practice of long standing. The Carrier advances a procedural argument as well, having to do with the processing of the Claim.

After a thorough review of the Parties' arguments, we are persuaded that the Carrier's interpretation of Rule 22 is the more accurate. From Paragraph (a), employees "will be laid off in reverse order of their seniority," when forces are reduced. Paragraph (b) specifies that employees shall receive "not less than five working days' notice" before forces are reduced. The record demonstrates that the Claimant was furloughed in reverse order of seniority, and that he did indeed receive the contractually required five days' notice. Moreover, the Board is not convinced that a binding practice exists contrary to the Carrier's action here, especially in view of cases cited by the Carrier in support of its position. And finally, nothing in Rule 22 has convinced us that it is contractually premature to furlough junior employees with a five-day notice while by separate notice abolishing other positions.

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Award No. 11069
Docket No. 10458
2-BN-EW-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1986.