

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

PARTIES TO DISPUTE: ( (Brotherhood Railway Carmen of the United States and Canada  
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

1. That the Denver and Rio Grande Western Railroad Company violated the provisions of the controlling agreement when it furloughed the herein named employes from Salt Lake City, Utah, Grand Junction, Colorado and Denver, Colorado without the proper notice. The Salt Lake City, Utah carmen were: G. Maestas, S. R. Clark, J. S. McCann, O. C. Canham, R. C. Dansie, K. Christison, R. J. Mathews, R. W. Ostler, E. D. Binks, D. R. Cassister, E. J. Davis, D. Butcher, K. C. Rugg, J. T. Torris, S. E. Smith. The Grand Junction, Colorado carmen were: J. Polhamus, M. A. Mills, J. W. Jensen, T. Krug, D. J. Humphreys, M. E. Maldonado, R. Thompson. The Denver, Colorado carmen were: D. J. Prentice, R. W. Yandell, C. D. Rotolo, D. J. Gargan, D. A. Kelso, C. S. Overton.

2. That said furlough was improper and represents a violation of Rule 23(b) of the current controlling agreement.

3. That the carrier be ordered to compensate the following listed carmen the amount shown opposite each name:

Mr. G. Maestas - 1 days pay at straight time.  
Mr. J. S. McCann - 1 days pay at straight time.  
Mr. S. R. Clark - 2 days pay at straight time.  
Mr. O. C. Canham - 1 days pay at straight time.  
Mr. R. C. Dansie - 1 days pay at straight time.  
Mr. K. Christison - 2 days pay at straight time.  
Mr. P. J. Mathews - 1 days pay at straight time.  
Mr. R. W. Ostler - 1 days pay at straight time.  
Mr. E. D. Binks - 1 days pay at straight time.  
Mr. D. R. Callister - 2 days pay at straight time.  
Mr. E. J. Davis - 1 days pay at straight time.  
Mr. D. Butcher - 2 days pay at straight time.  
Mr. K. C. Rugg - 1 days pay at straight time.  
Mr. J. T. Torris - 2 days pay at straight time.  
Mr. S. E. Smith - 1 days pay at straight time.  
Mr. J. Polhamus - 1 days pay at straight time.  
Mr. M. A. Mills - 1 days pay at straight time.  
Mr. J. W. Jensen - 1 days pay at straight time.  
Mr. D. J. Humphreys - 1 days pay at straight time.

Mr. T. Krug - 1 days pay at straight time.  
Mr. M. E. Maldonado - 1 days pay at straight time.  
Mr. R. Thompson - 1 days pay at straight time.  
Mr. D. J. Prentice - 1 days pay at straight time.  
Mr. R. W. Yandell - 1 days pay at straight time.  
Mr. C. D. Rotolo - 1 days pay at straight time.  
Mr. D. J. Gargan - 1 days pay at straight time.  
Mr. D. A. Kelso - 1 days pay at straight time.  
and twenty (20) hours pay at the rate of time  
and one half which is the amount of pay he would  
have received for accompanying the derrick to  
a derailment.  
Mr. C. S. Overton - 1 days pay at straight time  
and twenty (20) hours pay at the rate of time  
and one-half which is the amount of pay he  
would have received for accompanying the  
derrick to a derailment.

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 employees involved in this dispute are respectively carrier and employees 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 operative facts in this case are not in dispute. On February 18, 1986, Carrier was informed by both the Southern Pacific and Union Pacific Companies that because of severe flooding on their respective properties, they (SP & UP) were ceasing operations and would not accept any freight in interchange from the D&RGW. Carrier's immediate reaction to this announcement was to reduce its forces at several locations on its system including Salt Lake City, Grand Junction and Denver. The claims which are the subject of this dispute followed. On February 19, 1986, the Southern Pacific Company resumed operations and this Carrier immediately restored the positions which had been laid off.

The agreement provisions which are controlling in this case are found in Rules 23(b) and 23(e). Rule 23(b) requires not less than 5 working days notice to reduce forces; but Rule 23(e) permits the temporary reduction of forces in emergency situations with no minimum advance notice.

We have reviewed and considered the extensive presentations made by the parties in this case, including the opinions expressed in Award Nos. 4 and 7 of Public Law Board No. 4334. Those two cases involved the Machinist Organization on the D&RGW and the same temporary force reduction which is the subject of this dispute with the Carmen.

The Supreme Court of the United States has ruled that the precedents established by Section 3 Railway Labor Act Boards are "not necessarily binding" but do "provide opportunities for a desirable degree of uniformity in the interpretation of agreements through the nation's railway system." [Slocum v. Delaware, L & W. RR.Co., (1950) 339U.S. 239, 70 S. Ct. 577 94 L. ed 795.]


While this Referee would not blindly follow a precedent where to do so would merely serve to compound an error, here we have precedent on the same property involving the same issues and agreement provisions as we have been asked to interpret. The Awards of Public Law Board 4334 have adequately addressed the germane issues of this case. The Awards are not, on their face, palpably erroneous. Therefore, these prior decisions should control in this case. Any other standard would surely lead to confusion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1988.