Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11662
SECOND DIVISION Docket No. 11525
89-2-88-2-17

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division TCU
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe and Iron Range Railway Company violated the terms of our current Agreement, particularly Rule 23(a), when they failed to provide five (5) day advance furlough notice to Carman W. R. Willow.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate Carman W. R. Willow in the amount of eight (8) hours pay for each day commencing January 21 through January 24, 1987 or a total of thirty-two (32) hours for his rate and class.

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 12, 1987 Carrier issued a bulletin advertising a position of Carman No. 2 on the Iron Range Division with Saturday and Sunday as rest days. The closing date for bids on this bulletin was January 17, 1987. On that date, Claimant was recalled to service to work the position of Carman No. 2. However, the day before, on January 16, a notice was posted cancelling Position No. 2. That same date, Bulletin No. 3 was issued advertising a position of Carman No. 2 with Monday and Tuesday as rest days. Bulletin No. 3 was set to close on January 21, 1987.

On January 20, 1987 two things occurred. Claimant was told by a Supervisor that he was being furloughed at the close of business that day. Also an assignment bulletin was posted indicating that Position No. 2, advertised on Bulletin No. 1, was cancelled.

On January 23, 1987 Bulletin No. 4 was published. Bulletin No. 4 sought bids on Position No. 2 with Thursday and Friday as rest days. This posting occurred two days after bids were closed on Bulletin No. 3. However, the position advertised in Bulletin No. 3 had not been assigned by bulletin, nor had the bulletin been cancelled or the position abolished.

On January 28, 1987 Bulletin No. 4 was cancelled. That same date Bulletin No. 5 was issued seeking bidders for Position of Carman No. 2 with Friday and Saturday as rest days. On February 3, 1987, a notice was posted indicating that Claimant was the successful bidder.

The Organization contends that Carrier failed to afford Claimant five days' notice when he was told that he was furloughed effective January 21, 1987. He did not work the next four days. The Claim before us seeks payment for these days.

The Carrier argues that it was not required to afford Claimant with five days' furlough notice by reason of Rule 23 (a) reading;

> "Except as otherwise provided in this rule, when it becomes necessary for the Carrier to reduce its forces in any department, seniority per Rule 24 will govern. Not less than five work days' notice will be given to the employees to be laid off before the forces are reduced, and a copy of the notice will be furnished the local committee. If the notice is posted by twelve noon, that day shall be one of the five days' notice. The provisions of this rule with respect to notice of force reduction will not apply to employees in service due to filling vacancies or positions of thirty days or less duration, such employees may be laid off without such notice."

We have problems with applying Rule 23 (a) to the situation before us. For openers, forces were not being reduced. They were being increased and Claimant had been recalled and assigned to Carman Position No. 2 because a permanent position was being added and it was expected that he would be the successful bidder. What followed was almost a comedy of errors, predicated not on a decision to reduce forces or eliminate a position, but on a decision to change rest days of the position. In changing and re-changing rest days, the position, on one occasion, was cancelled and on another the bulletin was cancelled. And still another time it was bulletined but thereafter just ignored.

We are not certain if there is a distinction between cancelling a position, and cancelling a bulletin advertising a position, but, nonetheless it was done. We do know, though, that under the Agreement a position may be abolished, but we do not find where it can be cancelled. Nonetheless, Claimant was recalled on January 17, 1987 for the Carman No. 2 position, worked the job for four days, was laid off for four days and then recalled and worked the job continuously until it was assigned to him by bulletin on February 3, 1987.

Notwithstanding that which was occurring with bulletins, cancellation of position notices and cancellation of bulletin notices, except for four days, January 21, 22, 23 and 24, 1987, Claimant occupied the Position of Carman No. 2 continuously from January 17, 1987.

Carrier bottoms its defense heavily upon the last sentence of Rule 23 (a). As indicated above we have doubts about the application of this paragraph of this Rule to the situation because forces were being increased, not reduced. Nonetheless, we do not have any evidence demonstrating that any one, at any time, ever considered Position No. 2 to be a "position of thirty days or less duration." In fact it took half that time to get the job bulletined and filled and it should be noted that every time it was referenced in any notice it was referenced as Position No. 2.

In any event Position No. 2 was not bulletined as a temporary position, nor was it bulletined as a vacancy of less than thirty days. We have evidence in this record that temporary positions, in one case one expected to last five to seven days, are specifically bulletined with a notation that they are temporary. Position No. 2 was mentioned seven times in various postings between January 12 and February 3, 1987 and not once was it described as a temporary job or assignment.

Carrier also draws argument from Rules 15 (a) and (e) in support of its denial of this Claim. Based on the unique facts and unusual circumstances of the bulletining of Position No. 2 it is our view that paragraphs (a) and (e) of Rule 15 are not appropriate.

Accordingly, on this record it is our conclusion that Carrier established a permanent position when it bulletined Position No. 2 on January 12, 1987. It recalled Claimant and he was not at that time working a vacancy of thirty days or less, nor was he on a temporary position of thirty days or less. Therefore, if Claimant were to be furloughed he was entitled to receive 5 work days notice. He did not receive this notice which was a violation of the Agreement.

Claimant is seeking four days' pay. The facts before us suggest that he worked four consecutive days and was laid off for four consecutive days' before being recalled. At best he would be entitled to compensation for only workdays that he was not used, not intervening rest days. Accordingly, the Claim will be sustained for two days' pay at the straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

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Docket No. 11525
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1989.