Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11692
SECOND DIVISION Docket No. 11456
89-2-87-2-106

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Carrier violated Rule 21 of the current agreement when they failed to give Electrician Wm. Glew a five (5) day notice as required.

2. That the Carrier make Mr. Glew whole for any wages or other losses suffered due to the unjust action of the Carrier.

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 was assigned as an Electrician helper on Job No. 263 at the Oelwein Diesel Shop when, on April 24, 1986, the Carrier posted Bulletins S-154 and S-155. Bulletin S-154 was a five-day notice advising that the identified positions were being abolished effective at the close of shift, April 30, 1986. Bulletin S-155 contained a list of the employees who were expected to be laid off as a result of the abolishment of those positions. The Claimant's name did not appear on this list.

Due to the abolishment of Job No. 260, Electrician L. Kaune exercised his seniority by displacing Electrician D. Schommer, the incumbent of Job No. 265. Electrician Schommer, in turn, displaced the Claimant from Job No. 263. Not having sufficient seniority to displace anyone else, the Claimant was furloughed.

The Employees filed a Claim, which was subsequently denied, contending that W. Glew had not been given a proper five-day notice of furlough. They cited "Rule 21(a)-Force Reduction/Recall of Forces," which states in pertinent part:

> "...In reducing forces, at any point, reduction shall first be made of helpers who have not established date as mechanic, then apprentices, and finally, mechanics. ...Any employees affected under this rule will be given, in writing, five (5) working days' notice and lists will be furnished local committee."

They charge that not only did the Carrier fail to give the Claimant notice but that it also did not reduce forces in the order specified. Both of these violations allegedly deprived the Claimant of his contractual rights under Rule 21(a). Further, the Employees cite Second Division Awards 4312, in which that Board established the principle that when the Carrier violates Rules, a penalty is proper to insure compliance with said Rules. The same principle was also upheld in Second Division Award 5341 which stated:

> "...Carrier violated Article V of the Agreement. If no penalty is assessed for the violation it is an invitation to the Carrier to continue to violate it with impunity. The explicit provisions of Article V could become meaningless in similar situations. This is clearly not the purpose of any agreement. A penalty in the amount requested here is just and proper."

The Carrier responded to the charges by claiming that Mr. Glew was not an "affected employee" under the meaning of the Agreement. His job was not "abolished," but rather he was bumped in the exercise of seniority. Further, the Carrier maintains that by raising the issue that the Claimant was a helper and that his position should have been abolished first, the Employees asserted a new basis for their Claim on July 14, 1987, fifteen months after the original Claim, which is procedurally impermissable.

In defense of its action, the Carrier cited the Boards' findings in the following Second Division Awards:

> "No. 2274: ...We think the language used in Rule 22(b) should be applied to the subject of the bulletin to which it relates. In that sense, the 'men affected' are those whose positions are being abolished. If we were to extend its meaning beyond that subject, and relate it to all employees who might become affected because of the fact that the men whose positions were being abolished might have and would exercise their seniority, we would place on the Carrier an almost impossible, and certainly an impractical requirement, for the carrier would then have to anticipate what each employee was going to do. We do not think such was either the intent, meaning, or purpose of the langauge used."

"No. 4089: The causes of nation's and Beal's displacement were the respective elections by two senior employees to bump them. Since these causes intervened between them, the force reduction and the displacements do not constitute cause and effect, and these claimants cannot be held to have been affected by the reduction itself. If they were affected by it, within the meaning of the rule, so were the employees they may have then displaced, and so on indefinitely. We necessarily hold that the employees affected, within the meaning of Rule 16(b), were those directly concerned.

No. 6805: The Organization contends that a Carrier cannot avoid the impact of a furlough and force reduction notice by abolishment, particularly where the Agreement, as here, specifically states that the notice requirement goes to abolishment or reduction in force. We cannot disagree with that proposition as an abstract principle, but the instant case is not such a situation as the Organization seeks to proscribe. This case is more akin to our earlier Awards wherein a senior employee, after due notice, has his job abolished and then bumps a junior man in the orderly exercise of seniority. The net effect is that the junior man is displaced in a chain reaction effect that may or may not lead back to the original abolishment. In these situations we cannot say that such secondarily affected employees were intended to be covered by the notice requirements before seniority can be exercised."

It must first be noted that any argument that the Employees wish to present on behalf of their position must have been raised in the local handling of the Claim between the parties on the property. It is impermissable to submit new arguments or evidence to this Board. This ruling arises from Circular 1, which reads in pertinent part:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

The instant Claim, therefore, must be limited to the original issues raised on the property.

In respect to the substance issue raised in the original Claim, the Board finds, based on the evidence before it, that the Carrier was not required to give Electrician William Glew a five-day notice of furlough. The Claim, therefore, is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.