

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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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rule 27, when they furloughed Electrician R. M. Mimick effective September 5, 1986, without affording him five (5) days notice as provided for in the rule.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician Mimick in the amount of \$530.40 for five (5) days pay (40 hours) at straight time rate account not being given the prescribed five (5) days notice.

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 an Electrician in the Maintenance of Way Department, working on the Nebraska Division, on August 27, 1986, when Bulletin No. 7-86 was posted, effective at the close of that shift. It read in pertinent part:

"Effective at close of shift August 27, 1986, the following positions in the Maintenance of Way Electrical Department will be discontinued:

Laramie, Wyoming, Lead Electrician, T. C. Annis
Rawlins, Wyoming, Lead Electrician, G.A. Schulze
Omaha, Nebraska, Electrician, D.A. Foy
Omaha, Nebraska, Electrician, D.B. McKim
Omaha, Nebraska, Lead Electrician, D.L. Gourley
Employees affected as a result of the discontinuance of the above position may exercise his seniority rights in accordance with Rule 27 of the Shop Crafts Agreement."

As a result of that Bulletin, Mr. Annis displaced Mr. McCray at Salina, Mr. McCray displaced Mr. Weinert at Omaha, and Mr. Weinert displaced the Claimant, who was furloughed at the close of the shift on September 5, 1986.

The Organization filed a Claim on October 20, 1986, alleging that Claimant was denied a five-working-day notice of furlough per Rule 27 of the Schedule Agreement, which reads in pertinent part:

"...Except as provided for hereinafter, forty (40) bulletin hours notice will be given before hours are reduced. If the force is to be reduced, five (5) working days notice will be given the employees affected before reduction is made, and lists will be furnished the local committee. Bulletin notice of force reduction, as contemplated in this paragraph, shall be in the format set forth in Appendix '19' hereto."

The Claim was subsequently denied on November 17, 1986.

It is the position of the Carrier that no Rule or Agreement was violated when the Claimant was not compensated five day's pay when he was furloughed as a result of the series of displacements resulting from the abolishment of an Electrician's position in his Department. According to the Carrier, Rule 27 does not provide for five (5) days of compensation to a junior employee simply on account of a senior employee's displacement, or exercise of seniority, over the junior employee. Instead, it refers only to the "affected employee" (i.e., the employee whose position is abolished) rather than the employee(s) subsequently displaced.

The Organization disagrees, and insists that the Claimant was "...denied his five day notice in accordance with the controlling agreement..." and that he was "...not identified on bulletin dated August 27, 1986, as the affected employee in accordance with Rule 27." It is its understanding that "...all provisions of Rule 27 would also apply to all subsequent bumps or displacements that are the result of the original force reduction."

In arriving at its decision, the Board refers to Second Division Awards 4089 and 2274, which read in pertinent part:

"The causes of Nation's and Beal's displacements 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 then have displaced, and so on indefinitely. We necessarily hold that the employees affected, within the meaning of Rule 16(b), were those directly concerned." (Second Division Award 4089)

"It is the organization's thought that the words 'men affected,' as used in Rule 22(b), and of whom a list is to be furnished the local committee, includes all employees affected thereby whether because of the fact that their positions are being abolished or because of the fact that they are being displaced, in the exercise of their seniority, by those whose positions are being abolished...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 position 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 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 language used." (Second Division Award 2274)

The Board concurs that "affected employees" refers to those whose jobs are about to be abolished. There has been no showing that the Carrier is required to post a list of all those employees who could be bumped if and when a senior employee exercised seniority rights under the controlling Agreement. Since there has been no evidence presented of a violation of the agreement, there is no need to address the issue of a penalty. The Claim, therefore, is denied.

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 22nd day of March 1989.