

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 of TCU
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated Rule 26 of the current Agreement, as amended, when they failed to grant Patternmaker C. J. Harless a five (5) work day notice before furloughing him.

2. That because of such violation the Norfolk and Western Railway Company be ordered to compensate Patternmaker C. J. Harless five (5) days pay at the Patternmaker's pro rata rate.

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 Organization contends that the Agreement was violated when Claimant was furloughed without a five day notice. The facts are that late in the day on September 21, 1987 a more senior employee, possessing displacement privileges as a result of a return to service understanding reached between the Organization and Carrier, reclaimed the Patternmaker position he had occupied at the time of his dismissal. Claimant was notified by telephone that evening that he was displaced effective the next day and not to report for work.

The Rule under which Claim is made, Rule 26, makes it clear that a five-working-day notice is applicable to employees whose positions are abolished. The Rule also provides that when the force is reduced, five days notice will be given the men affected. However, the Rule does not have corresponding requirements in situations where an employee is displaced by an employee who is being returned to duty following settlement of his Claim challenging an earlier disciplinary action. Moreover, while a displacement occurred, total numbers in the force were not actually reduced.

The Rule does not provide for advance notice in circumstances similar to those present here and we are unable, by Board Award, to develop such a requirement for the parties. Accordingly, the Claim is not supported by the Rule, it is without merit and will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.