

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM:

1. That the Richmond, Fredericksburg & Potomac Railroad Company (hereinafter 'carrier') violated the provisions of Rule 24 of the Shop crafts Agreement between Transportation Communications International Union - Carmen's Division and the Richmond, Fredericksburg & Potomac Railroad Company and the service rights of Carmen R. E. Black, M. D. Bailey, J. R. O'Brien, R. Wilson, L. A. Garret, E. C. Brunson, R. C. Moran, A. E. Brookman, A. Quash, S. L. Blackburn, L. A. Bou and J. A. Riveria (hereinafter "claimants") when the carrier failed to give the claimants a proper five (5) working days notice prior to the reduction in force.

2. Accordingly, the claimants are entitled to be compensated for eight (8) hours each at the applicable rate for the carrier's failure to give the claimants a proper five (5) working days notice prior to the reduction in force and subsequent violation of Rule 24 of the Shop Crafts Agreement.

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 May 21, 1990, the Local Chairman of the Organization filed a claim on grounds that Rule 24 of the operant Agreement was violated when the Carrier posted holiday notices for twelve Carmen for Good Friday holiday, April 9, 1990. The claim was denied on the property, and then appealed up to and including the highest Carrier Officer designated to hear such, in accordance with the normal manner of handling claims, prior to the docketing of this case before the Board.

The Rule at bar reads, in pertinent part, as follows:

"Rule 24

If the force is reduced, not less than five (5) working days' advance notice will be given the men affected before reduction is made, and lists will be furnished the local committee...."

The consistent position of the Carrier throughout the handling of this claim has been that the Rule cited above is not applicable to the facts of this case, but that the Carrier's actions were protected by the holiday Agreement which "...takes precedence and provides for those who will work or will not work (on) holidays." According to the Carrier, there was no force reduction. On April 9, 1990, there were simply holiday assignments. The Carrier admits that there have been instances, in the past, when notices were given prior to holiday assignments, but intimation is that such were merely a matter of courtesy. When Good Friday holiday notices had been given in 1983 and 1984, such had been issued in less than five days before the holiday. Further, earlier claims on the instant issue had been filed by this Organization as early as 1971, according to the Carrier, but had never been appealed upon denial. Likewise, claims had been filed by the Machinists also on this issue, but had not been pursued when denied by the Carrier.

Argument by the Organization, on basis of Rule 33, that non appeal of denial of an earlier claim comparable to the instant one does not set precedent cannot be properly evaluated by the Board since it is unknown, from the record, whether such claim was forfeited on basis of a time-limit violation or not. The Organization is correct that precedent set by another Organization and its dealings with the Carrier is not necessarily binding on the Carmen albeit if the Rules at bar are substantively the same the Board would look to consistency of practice and application of such. Clearly on basis of arbitral precedent in this industry, however, holiday assignments are not normally construed as reductions in force if there is a specific set of contractual provisions dealing with holidays. In this case there were no furloughs involved, as that term is generally used; there was no application of seniority provisions of the Agreement; and no bumping rights were exercised by any of the Carmen. In effect, there was no reduction of force. Attempts by the Organization to apply Rule 24 to the assignments posted by the Carrier on the Good Friday holiday in 1990 are improper. The Agreement was not violated.

A W A R D

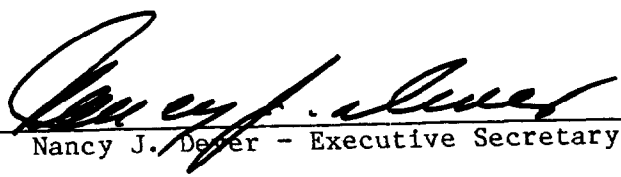
Claim denied.

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Award No. 12418
Docket No. 12342
92-2-91-2-135

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of September 1992.