

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12487
Docket No. 12309
92-2-91-2-106

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

PARTIES TO DISPUTE:

(Brotherhood Railway Carmen/
Division of TCU
(
(CSX Transportation, Inc. (formerly
(The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Carmen J. D. Penix, G. McSorley, C. Heighton, Jr., E. Kazee, G. Potter, P. Cunningham, C. Akers, J. Hannah, V. Turvey and J. Waltlers (hereinafter referred to as ("claimants") and the provisions of Rule 27 of the controlling agreement when on November 25, 1987 the carrier at the end of claimants' regular second shift assignment informed the claimants not to report back until January 4, 1988 and not allowing the claimants a proper five (5) day notice of furlough.

2. Accordingly, the claimants are entitled to be compensated for five (5) days pay at the applicable straight time for said violation.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 4, 1987, the nine Claimants to this case filed a Claim for five days' pay on grounds that the Carrier had violated Rule 27 of the operant Agreement when it failed to provide proper notice of furlough as provided by this Rule. The Carrier shut down its Raceland Car Shop from November 25, 1987, through January 3, 1988. According to the Claimants, neither they nor their union Representatives had been advised of this properly.

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

"Rule 27--(Revised Effective June 1, 1969.)

(a) When it becomes necessary to reduce expenses, the force at any point, or in any department or subdepartment thereof, shall be reduced, seniority to govern as follows:

- A. One seniority for machinists.
- B. One seniority for boilermakers.
- C. One seniority for blacksmiths.
- D. One seniority for sheet metal workers and pipefitters.
- E. One seniority for electricians.
- F. Four subdivisions for the carmen as follows:
 - (1) Patternmakers.
 - (2) Upholsterers.
 - (3) Painters.
 - (4) Other Carmen.
- G. Helpers will hold their seniority in the respective departments or trades above listed.

(b) Except as provided in Paragraph (g) of this rule, five working days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.

UNDERSTANDING--(Revised July 16, 1982.)

(3) The company has already issued instructions which will result, we hope, in giving the full five working day notice to employes who will be affected by a suspension, from now on, which is a change from past practice; but there may be times, at certain places, when the company may not be able to post its notice so it can be seen by the men before work time of the first of the five days, and it may so happen that it will be lunch time before the notice is posted; and in that case, the company would expect to count that day as one of the five working days notice. In such a case,

the men would be privileged to see the notice when posted."

In denying the Claims the Carrier states, at the first level of handling, and at subsequent steps, that it had issued Bulletin #13 on November 17, 1987, in which it was noted that the Raceland Car Shop:

"...would be shut down except for the force indicated at the end of assigned shift Wednesday, November 25, 1987, through January 3, 1988, and that those employees affected would be governed by Rule 60 1/2 of the Shop Crafts Agreement, and all employees would report to their regularly assigned position at 7:00 A.M., Monday, January 4, 1988, unless notified in writing. This was attached to all Bulletin Boards with a copy to all Local Chairmen.

Additionally, it is noted that the carmen working first shift in the Valve Room were specified by name and identification number, copy attached."

The Bulletin in question states the following and is cited here in toto for the record:

Russell, Kentucky
November 17, 1987 wy
JTT-147
110.06

PLANT MANAGER'S BULLETIN #13

All Employees:

Raceland Car Shop will be shut down except for the force indicated below, from end of assigned shift, Wednesday, November 25, 1987, through end of assigned shift January 3, 1988.

The force working during this shut down period will be as follows:

B&B Foreman	-	1
B&B Mechanic	-	2
Blacksmith	-	8
Carman	-	58
Electric Crane Opr.	-	1
Electrician	-	21

Laborer	-	23
Machinist	-	36
Machinist Hpr.	-	3
Office Personnel	-	11
Painter Hpr.	-	8
Painter	-	8
Sheet Metal Wkr.	-	13
Supervisor	-	<u>15</u>
TOTAL		208

In reference to the above employees who will be working, attached is a position listing of those positions which will be working. This list also indicates the incumbent on the position. All other positions will be abolished effective end of shift Wednesday, November 25, 1987.

If the position which an employee is working does not appear on the attached list then that position is abolished and the incumbent may exercise his rights under the applicable agreement rule, Rule 60 1/2 for Shop Crafts and Rule 13 for Firemen and Oilers.

All employees, by this notice, are recalled and will report to their regularly assigned position beginning effective 7:00 A.M., Monday, January 4, 1988, unless notified in writing.

R. D. Bridgman, Jr.
Plant Manager

cc - All Bulletin Boards
All Local Chairman

CARMEN WORKING SHUT DOWN - 1st Shift - Value Room

Corrected

H. R. Coleman	-	2080094
Paul Roark	-	2004183
A. M. Rice	-	2089674
N. Hartman	-	2700130
Glen Bays	-	2004799
William Fannin	-	2255096
Wandel Elpin	-	2100576
Fred Diller	-	2100572
Adrain Flocker	-	2100623
Franklin Binion	-	2245871
Carson Gullett	-	2100694
Clyde Wheeler	-	2100758
Jack Spainhower	-	2100756
Forrest Logan	-	2100847
John Nunley	-	2100549
Raymond McCallister	-	2167752

Emit Manning	-	2100917
John Messer	-	2101009
Donald Baker	-	2255144
Elwood Carroll	-	2286030
Ernest Bailey	-	2101165
Winfield Howard	-	2101184
Thomas Baldrige	-	2089232
Norman Thompson	-	2176693
Wesley Kilburn	-	2101267

WORKING VACATION VACANCIES WEEK OF 11/30 - 12/4

Gary Stephens	-	2101202
Luther Lyons	-	2197920
Athine Kelly	-	2101312
Larry Clevenger	-	2101445
Gary Melvin	-	2101234

****As of November 25, 1987, second shift, Valve Room, will not be working during the shut down from 11/25 through 1/3."

The consistent position of the Organization in this case is, as the General Chairman states in his April 3, 1989 correspondence to the Carrier, that both the Local Chairman, and the employees working the Triple Valve Room, "...maintain, (however), that the alleged notice was never posted...." The Carrier responds, by the Director of Labor Relations' correspondence to the General Chairman under date of March 26, 1990, as follows:

"...(This) bulletin was addressed to 'All Employees', and advised more than 750 employees in all departments of the Raceland Car Shops, including the Tripe Value Room where Claimants worked along with some 30 other carmen, of jobs being abolished as a result of the shutdown and of the number of employees in each craft which would be required to work during the shutdown. The bulletin even named the employees who would be required to work during the shutdown.

* * * *

The Carrier asserts that the bulletin was posted. Eleven of more than 40 carmen in the Triple Valve Room contend it was not. Stated another way, 11 of more than 750 employees in Raceland Car Shops contend it was not.

* * * *

Obviously, if the Carrier had failed to post such notice it would have been flooded with over 750 similar claims from more than six different Organizations, the majority of which would have been appealed by your Organization. The absence of such a deluge of claims supports the facts that the notice was indeed posted."

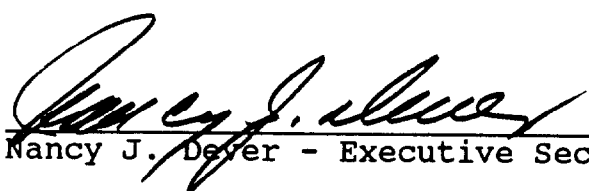
A review of the complete record on this case does not contain sufficient probative evidence to support either the Carrier's or the Organization's position. When such irreconcilable differences occur, "...such claims have traditionally been dismissed by this Board" (See Third Division Award 26428; also Third Division Awards 19702, 20053, 23834, 26679 and Fourth Division Award 3201). Given the record before it the Board can see no reason to diverge from such precedent in the instant case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1992.