

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TENNESSEE CENTRAL RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement when it failed to give at least ninety-six (96) hours of advance notice to Messrs. Hershel Felts, W. O. Holley, Vernon Emmett, W. R. Chapman, Joe Jones, Jesse Bates, Roy Higgins, Otis Patterson, Armstrong Herd, Robert Bates, Charlie Massey, William Vowell, Jake Broomfield, H. J. Toler, Thomas Dishman, W. H. McLean, C. J. Melton and Sidney Thomas, whose positions were abolished in force reductions which became effective at the close of work on January 22, 1960 and/or January 25, 1960 and/or March 22, 1960.

(2) Each of the claimants named in Part (1) of this claim now be reimbursed for the amount of monetary loss suffered because of being given insufficient advance notice of force reductions on January 22, 1960 and/or January 25, 1960 and/or March 22, 1960.

EMPLOYES' STATEMENT OF FACTS: Effective with the close of work on January 22 and 25, 1960, and on March 22, 1960, the Carrier reduced forces within the Maintenance of Way and Structures Department.

The positions of Section Laborer held by Claimants Hershel Felts, W. O. Holley, Vernon Emmett, W. R. Chapman, Joe Jones, Jesse Bates and Roy Higgins were abolished effective with the close of the work period (3:30 P.M.) on January 22, 1960. Notice of said force reduction was not given until 9:00 A.M. on January 22, 1960, to Claimants Felts, Holley, Emmett and Chapman, and was not given until 12:00 o'clock noon on January 22, 1960 to Claimant Jones. Claimants Bates and Higgins were not given any notice whatever on January 22, 1960, but were permitted to end their day's work on Friday, January 22, 1960, without any notice whatever. While off duty on their rest days of Saturday, January 23 and Sunday, January 24, Claimants Bates and Higgins received no information or notice of force reduction, so they both reported for duty at the regular starting time (7:00 A.M.) on Monday, January 25, 1960. At that time they were told that they had been laid off in force reduction as of 3:30 P.M. on January 22, 1960.

And the Supervisor of Wages in his letters of May 3, 1960, and July 15, 1960 (erroneously dated April 15, 1960) (Carrier's Exhibits Nos. 19 and 45, respectively), further pointed out that although positions have been abolished when circumstances warranted, the occasions for doing so have been infrequent; force reductions having been made generally by laying off the men in accordance with the procedure provided for in the agreement and that the instant case was so handled.

Employees even assert in the resume of their position set forth in their letter of March 10, 1960, that " * * * Tennessee Central Railway had entered into an agreement to the effect that employees cut off in force reduction would be given 96 hours' notice prior to the time that the force reduction took effect." (Emphasis ours), but such is not the case, and it cannot be shown that any such agreement was ever entered into.

The language of an agreement rule cannot be distorted for the purpose of claim support. Rules agreed upon by the parties must be interpreted as written, an elementary rule of law and reason, which has been upheld by the Divisions of the Adjustment Board on innumerable occasions.

And, by the same token, neither can a material fact be minimized, disregarded, or considered as other than what it actually is, for the purpose of fitting it to an agreed upon rule.

Carrier respectfully submits that the rule relied upon by Employees could have no application in the circumstances of the instant case, in view of which the claim must, therefore, be denied.

Other facts as set forth by Carrier in its statement of facts, such as the time of notification of the men in Foreman D. Lynch's gang, and the record of many of the men having performed service on days for which compensation is claimed for them, void the claims of the men involved to the extent shown irrespective of any other factor.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute that the Claimants herein were laid off in force reductions. It is clear that Article IV of the Agreement of October 7, 1959, relied upon by the Employees, is applicable in force reductions. The force reductions involved were not within the exceptions to that Agreement. It follows, therefore, that the Carrier was required to give not less than ninety-six (96) hours' notice to the Claimants, who were regularly assigned employees, prior to the reductions being made. The claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1964.