

Award No. 14828
Docket No. MW-12917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, at the close of work on February 2, 1960, it laid off Section Laborer Frank Creel without benefit of at least 96 hours of advance notice.

(2) Claimant Creel be allowed two days' pay at straight-time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant was and had been regularly employed on and assigned to the section at Centralia, Illinois. On the morning of February 1, 1960, the Claimant was notified that he would be laid off in force reduction at the close of work on February 2, 1960.

Because the Claimant was not given the 96 hours of advance notice required by Agreement rules, Vice Chairman B. B. Edwards discussed the matter with Supervisor Cozad, who then advised Vice Chairman Edwards that he (Cozad) was not aware that the previous requirement to give 36 hours' advance notice of force reduction had, by agreement, been extended to 96 hours of advance notice effective as of December 1, 1959, and he (Cozad) assured Vice Chairman Edwards that if the Agreement had been so revised, he (Cozad) would see that the Claimant "would not lose anything by this lay off." (See Employees' Exhibit A.)

Upon receipt of advice from the Claimant that he had not been reimbursed for the wage loss suffered, the instant claim was presented to Division Engineer Forbes (see Employees' Exhibit B-1), together with a Memorandum attached thereto reading:

"March 31, 1960

Mr. Forbes:

Our Vice Chairman discussed this matter with Supervisor Cozad at Centralia on February 2, 1960. It was our understanding at that time that the supervisor would investigate to see if 96 hours were required and if so, he would take care of the situation. This he has failed to do which is the reason for this claim.

/s/ W. C. Hull"

The provisions of Article IV of the Agreement effective December 1, 1959, plainly applies only to regularly assigned employees. As already indicated, claimant was not regularly assigned at the time in question and the agreement provisions had no application to him in this instance."

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: At Centralia, Illinois, Carrier maintains a rail welding gang, No. 346, assigned to perform welding in the Frog Shop and Rail Welding Plant. The employees working in this gang are carried on the St. Louis Division-North, Seniority Roster of Welders and Welder Helpers.

At the Rail Welding Plant, standard rail lengths (39 feet) are welded into 1,440 foot lengths known as "ribbon rail." The nature of the work is such that it is not required throughout the year but is performed on an irregular schedule, dependent upon service requirement and economic factors. When new rail is received from the steel mills, the Carrier augments the force assigned to the Rail Welding Gang to assist in unloading the rail.

In January and February, 1960, the Carrier began to receive quantities of new rail from the steel mills and found it necessary to obtain additional working force to unload this rail. The Claimant, who was laid off from Gang No. 7, Ashley, Illinois, was offered this work.

The Claimant, Section Laborer Frank Creel, had been laid off as a section laborer in October, 1959, and had performed no service for the Carrier in November and December. His seniority as a section laborer was carried in Gang No. 7, Ashley, Illinois, on the St. Louis Division. He was offered temporary work in connection with the rail welding operation at Centralia and was utilized to unload rail on January 8, 11, 12, 13, 14, 15, 27, 28, 29, February 1, 2, 5, 8, 9, 10, 11, 12, 15 and 16, 1960.

On February 1, 1960, there was insufficient work available for the entire working force, and the Claimant was notified that he would not be needed after February 2, 1960. On February 5, additional carloads of new rail arrived at the Rail Welding Plant, and he was again called upon and utilized through February 16, 1960.

On March 31, 1960, a claim was filed in behalf of Section Laborer Creel, alleging that Carrier's notice to him on February 1, 1960 (that his service with Rail Welding Gang 346 was unnecessary after February 2) was not in compliance with the provisions of Article IV of the October 7, 1959 Mediation Agreement. Carrier declined the claim.

The agreement between the parties, effective September 1, 1934, as amended, and the October 7, 1959 Mediation Agreement are by reference made a part of this Statement of Facts.

OPINION OF BOARD: Frank Creel was regularly employed as a section laborer assigned to Gang No. 7 at Ashley, Illinois. He was laid off on October

27, 1959, and performed no service in November and December of that year. Then Carrier assigned him to assist with the rail welding operation at Centralia, Illinois, where he worked with Gang No. 346 on certain dates in January and February, 1960. Mr. Creel was notified on February 1, 1960, that he would be laid off in force reduction after February 2, 1960.

He takes the position that Carrier violated the Mediation Agreement of October 7, 1959, when it failed to give him at least 96 hours' advance notice as provided for in Article IV.

Carrier maintains that Mr. Creel retained his seniority rights in Gang No. 7, but that he had no seniority as a section laborer with Gang No. 346. It argues that he performed temporary work with this gang and was not a substitute for a regular employee. As a casual employee he was not subject to the 96 hours' notice required by the Mediation Agreement of October 7, 1959.

Although the work at the Centralia Welding Plant is sporadic and the size of welding gang No. 346 is increased or decreased depending upon economic needs, the work was not unplanned or of an emergency nature. The fact that Mr. Creel was assigned for brief and uncertain periods to assist the rail welding gang in unloading rail when it was received from the steel mills did not make him a casual laborer. He still maintained his status as a regularly employed and assigned laborer and therefore he was entitled to 96 hours' furlough notice. In fact, Carrier recognized him as a regular employee, for it gave Mr. Creel 36 hours' notice based upon what it regarded as the existing rule for furlough notice to regular assigned employees. The 36 hour rule had however been changed to 96 hours' advance notice.

We find that Carrier violated Article IV of the Mediation Agreement and section laborer Frank Creel is allowed two days' pay at straight time rate.

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 11th day of October 1966.

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