

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25324
Docket Number MW-25155

Robert W. McAllister, Referee

(Brotherhood of Maintenance of Way ~~Way~~ **Employees**)
PARTIES TO DISPUTE: {
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The Carrier violated ~~the~~ Agreement when it laid off **Trackman** D. Carroll on January 5, 1982 without benefit of five (5) days' advance notice (System File C-TC-1310/MG-34191.

(2) The claimant shall be allowed eight (8) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Claimant, **Trackman** D. Carroll, was laid off on January 5, 1982. ~~He~~ was regularly **assigned** to Force 1150, an AFE **Gang**. With no advance notice, it is charged that the Claimant could not make a displacement until January 7, 1982, thus losing one day's pay. The Carrier points out that the members of Force 1150 were **notified in** accordance with Rule 8 1/2 on December 23, 1981, that, effective with the close of business December 31, 1981, they would be **furloughed**. This did not take place due to unforeseen complications. It is the Carrier's position that each member of Force 1150 was personally informed that work was available on a strictly voluntary, day to day basis and that they had the option of exercising seniority rights prior to **or** on the cut off date of December 31, 1981. The problem with this argument is that it is simply an assertion. The only substantive evidence contained in the record is a written statement dated March 15, 1982, addressed to the Assistant General Chairman and signed by the Carrier Foreman in charge of the force. There is no mention of the **gang** members being given the option to exercise their seniority rights **or** continue on working in a temporary status. On the contrary, the Foreman states:

'We were not told that we could work on a day to day basis, but that we were to work on a day to day basis.'

Later, the Foreman states:

"These men wished to be cut off on the cut off **date** so they could their bumps where they could."

The absence of any rebuttal evidence to the contrary, this Board finds the record as a whole supports the Organization's claim,

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.