NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25325

THIRD DIVISION

Docket Number MW-25156

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 Trackmen L. Anthony and J. Hensley on January 5, 1982 without benefit of five (5) days' advance notice [System File C-TC-1311/MG-3418].

(2) The claimants shall each be allowed thirty-two (32) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Claimants, Trackmen L. Anthony and J. Hensley, were laid off on January 5, 1982. They were regularly assigned to Force 1150, an AFE Gang. With no advance notice, it is charged that the Claimants 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 Employes involved in this dispute are respectively Carrier and Employes 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.