

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

LEHIGH VALLEY RAILROAD COMPANY

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

(1) That under the application of Schedule Rule 4-a-1, employees coming within the scope of the Maintenance of Way agreement are guaranteed work and pay for eight consecutive hours per day for five consecutive days per week, except in a week where holidays occur;

(2) That the Carrier violated Schedule Rule 4-a-1 by laying off in force reduction Section Laborers Joseph McGowan, George Barilla, Robert Spohn, and Rudolph Wahl, Lehigh, on Monday, May 21, 1945, and not permitting them to work the guaranteed eight hours per day, five days per week;

(3) That Section Laborers Joseph McGowan, George Barilla, Robert Spohn, and Rudolph Wahl, Lehigh, who were laid off in force reduction on Monday, May 21, 1945, shall each be paid eight hours per day for May 22, 23, 24, and 25, 1945.

EMPLOYEES' STATEMENT OF FACTS: On Monday, May 21, 1945, the following section laborers, Joseph McGowan, George Barilla, Robert Spohn, and Rudolph Wahl, who are employed at Lehigh, were notified that they were being laid off, effective at the close of the work period that day. As a result of those instructions, the above named employees were required to suspend work for the entire remainder of that week, and were allowed one day's pay at the section laborer's rate.

Agreement effective April 15, 1944, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As pointed out in Employees' Statement of Facts, Section Laborers Joseph McGowan, George Barilla, Robert Spohn, and Rudolph Wahl, who are employed by the Carrier at Lehigh, were laid off on Monday, May 21, 1945.

Rule 4-a-1, of the effective agreement, provides as follows:

"Hours Paid For

4-a-1. Except as provided in Rule 4-b, 4-b-1 and 4-b-2, the regularly established daily work hours will not be reduced below eight (8) consecutive hours per day, nor will the regularly established number of working days be reduced below five (5) consecutive days per week, except that this number of days may be reduced in a week in which holidays occur, by the number of such holidays."

violate the rules of the agreement in abolishing positions of the claimants which were not needed. The fact the positions were abolished May 21, 1945, which was the first day in that week, cannot be considered a violation of Rule 4-a-1, as there was not sufficient work to require the positions being kept in service after that date.

In Part 3 of the claim in this case, request is made that each claimant shall be paid eight hours per day for May 22, 23, 24 and 25, 1945. The payroll records disclose in the case of Joseph McGowan and Rudolph Wahl, each of these men was paid eight hours on the dates for which payment is now claimed, as they are allowed six days' vacation each, extending from May 22 to 28, inclusive. In the case of George Barilla, he was paid for vacation May 22, 23 and 24. He worked and was paid eight hours each on May 25 and 26, and was allowed pay for vacation on May 28th. In the case of Robert Spohn, no pay was allowed him after May 21.

The Carrier maintains that the rule relied upon by the Employees does not support the claim in this case, and there are no grounds to justify the payment requested. Therefore, this claim should be denied.

OPINION OF BOARD: Robert Spohn, working on a regularly assigned position as section laborer, was notified on a Monday that he was being laid off at the end of that day. He was paid for just that one day in that week.

The Organization contends that it was a violation of Rule 4-a-1 for the carrier, having started him on work for the week, not to have given him work and paid him for work on the next four days.

Rule 4-a-1 is as follows:

"RULE NO. 4—TIME ALLOWANCE

Hours Paid For. 4-a-1. Except as provided in Rules 4-b, 4-b-1, and 4-b-2 the regularly established daily work hours will not be reduced below eight (8) consecutive hours per day, nor will the regularly established number of working days be reduced below five (5) consecutive days per week, except that this number of days may be reduced in a week in which holidays occur, by the number of such holidays."

We are of the opinion that this Rule does guarantee work for five consecutive days per week except in weeks in which holidays occur.

The rule would not prevent the Carrier from abolishing positions of hourly rated employees at the conclusion of their week. When a man's week is started, however, he is employed for five consecutive days under this Rule and the unilateral action of the Carrier cannot terminate such employment prior to the expiration of the five day period.

The Carrier in its Submission states that the position of the Organization here is inconsistent with its position in Docket No. MW-3736. The rule here involved is a general rule while the Agreement contains a special rule covering "Basis of Pay for Monthly Rated Employees," Rule 4-c, thereby taking the monthly rated employees out of the general rule.

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 Rule 4-a-1 was violated by the Carrier as claimed.

AWARD

Claims (1) and (2) are sustained.

Claim (3) is sustained only as to Robert Spohn.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.