Award No. 4854
Docket No. CL-4623

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY PERE MARQUETTE DISTRICT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated rules of Agreement effective August 1, 1947, when at or about 5 P.M. (employes' quitting time) July 14, 1948, Management verbally notified certain employes at the Grand Rapids Warehouse, hereinafter named, not to report for work on July 15, 16 and 17, 1948, contrary to their obligation under Rule 15 (a) to notify the employes at least forty-eight (48) hours in advance of the effective date forces are to be reduced.

2. That Carrier compensate involved employes, namely, Bail Coleman, et al, for wage loss sustained during the first forty-eight hour period, viz., eight (8) hours pay each for July 15 and 16, 1948.

EMPLOYES' STATEMENT OF FACTS: At or about 5 P.M. (quitting time) Wednesday, July 14, 1948, the following regular assigned employes (Truckers) in the Carrier's Grand Rapids warehouse were verbally advised by their Foreman not to report for work on the following days, namely Thursday, July 15, 1948, Friday, July 16, 1948 and Saturday, July 17, 1948.

NAME	WORKING NUMBER	SENIORITY DATE
Bail Coleman	81476	11-5-46
A. Hulsapple	81435	8-19-46
E. Lueders	81509	2-18-47
A. Presley	79295	9-10-47
J. Holewinski	79102	10-22-47
R. Davidson	81078	12-13-47
C. Rawn	86488	2-5-48
A. Doernvos	79570	N. A.
W. Zawiastowkowski	79248	4-8-47
P. Serwertson	79518	N. A.*
R. B. Brown	82146	1-28-48
O. Bledsoe	79281	8-6-47
J. Middlebrook		11-26-47
D. Peterson	88483	N. A.*
M. Winston	79569	N. A.*

N. A.—Not available

weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"The formula to be used in converting a monthly rate to a daily basis as required by this section (a) is as follows:

"Multiply the monthly rate by twelve (12) and divide by three hundred six (306) (365 calendar days minus the 52 Sundays and 7 holidays) to determine the pro rata daily rate. Divide the daily rate thus obtained by eight (8) to determine the pro rata hourly rate, fractions less than one-half (½) of one cent shall be dropped, one one-half (½) of one cent or over shall be counted as one (1) cent. To determine the work days in the month, deduct the Sundays and holidays from the calendar days.

"(b) Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six (6) per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

Summarizing the above, Carrier submits that to sustain this claim would be to find that the claimants were regularly assigned employes whose positions were abolished in the reduction of forces. It would be to find that there are regularly assigned positions in group 3, which Rule 3 clearly provides is not contemplated. It would be to find that the claimants were regularly assigned to such positions, which question is also precluded by Rules 3, 8 and 57. It would render meaningless Rule 26 of the agreement. It would give a guarantee to the group 3 employes which was never intended when the agreement was made, as is evidenced by the fact that group 3 employes are specifically excluded from the application of Rule 35. It would be extending the coverage of Rule 15 (a) beyond that which was contemplated and understood by the negotiators when agreeing to it. To grant group 3 employes forty-eight hours' notice of reduction in force would avail them nothing because they would be the junior employes in a given seniority district and would have no seniority to exercise, the only reason advanced by the organization's representatives for requesting forty-eight hours' notice for employes in groups 1 and 2.

Carrier respectfully requests, therefore, that the employes' claim be denied by the Board.

(Exhibits not reproduced).

OPINION OF BOARD: The facts are not in dispute. All the claimants named were, on the dates set forth, employed in the Grand Rapids Freight Warehouse of Carrier as truckers and covered by the portion of the Scope Rule reading: "Group 3—Laborers employed in and around stations, stores and warehouses." At the close of work on Wednesday, July 14, 1948, the claimants were advised by their superior not to report for work on the following three days, and they did not report and were not paid for those days. The parties agree that this dispute is controlled by the interpretation and meaning of Rule 15 (Reducing Forces) upon which rule the petitioner relies and the Carrier states is not applicable in this case. The rule states as follows:

"RULE 15—REDUCING FORCE

"(a) Regularly assigned employes whose positions are abolished in the reduction of forces shall be notified at least forty-eight (48) hours in advance of the effective date reduction is to be made.

"(b) When reducing forces, seniority rights shall govern. Employes whose positions are abolished may exercise their seniority over junior employes. Other employes affected may exercise their seniority in the same manner. Employes displaced whose seniority entitles them to regular positions shall exercise their seniority within seven (7)

days. Employes who do not possess sufficient seniority to displace a junior employe will be considered as furloughed.

"(c) An employe desiring to protect his seniority rights and to avail himself of this rule must within seven (7) days from the date furloughed, file his name and address in writing with the officer authorized to bulletin and award positions, whereupon he will be furnished with a furlough letter, copy of which will be sent to the local chairman. He must also advise within seven (7) days of any change of address. An employe who does not comply with the provisions of this Section (c) shall forfeit all seniority rights and be closed out of service.

"(d) When forces are increased or vacancies occur, furloughed employes shall be returned, and required to return, to service in the order of their seniority rights. When a new position or vacancy is bulletined and is not filled by an employe in service senior to a furloughed employe who has protected his seniority as provided in Section (c) of this rule, the senior furloughed employe shall be notified and assigned to the position.

"(e) Furloughed employes failing to return to service within seven (7) days after being notified (by mail or telegram sent to the address last given) or to provide satisfactory reason for not doing so, will forfeit all seniority rights and be closed out of service.

NOTE 1—Furloughed employes may waive their right to return to service on positions or vacancies of less than thirty days duration by filing written notice with the officer authorized to bulletin and award positions and the local chairman. Such notice may be cancelled by similar written notice.

NOTE 2—It is understood that employes may not exercise seniority on a position named in Section (c) of Rule 7.

NOTE 3—It is understood that employes occupying positions named in Section (c) of Rule 7 may exercise seniority as provided in this rule when as a result of reduction in force, they are removed from such positions.

NOTE 4—It is understood that the date of postmark on letter or date of telegram defines the day furloughed employes are properly notified as provided in Section (e)."

Rule 15 is a special rule dealing with a particular subject, reducing forces, and the only exception contained in said rule is that paragraph (a) deals only with regularly assigned employes, the other paragraphs in the rule deal with all employes. Therefore, the controlling question for determination by the Board is whether claimants were regularly assigned employes as contemplated by the provisions of Rule 15 (a).

The record states and the Carrier admits that the claimants had been afforded six days work each week for some time prior to the date this claim arose. The record shows that each claimant was assigned to work regular hours, with regular starting and quitting times, and had reported to a regular gang checker or a regular position for from 3 weeks to 6 months prior to the date in question; also claimants were ordered to report back on their regular and formerly held positions on July 19, 1948 following the days the force was reduced.

The Carrier contends that Rule 15 (a) does not apply to claimants since they were Group 3, Rule 1, employes, that their positions are not subject to bulletin (Rule 3), and therefore Group 3 employes are not regularly assigned employes. There is no exception in Rule 15 stating that it is applicable only to Group 1 and 2 employes, and not applicable to Group 3 employes. The only exception contained in Rule 15 (a) is to employes not regularly assigned. This one single exception appearing therein, no other exception or exceptions

may be implied. See Award Nos. 2009, 3825 and 4551. Due to the regularity as to hours and place of work, together with length of employment before and after the time the force reductions took place, it is our opinion that claimants were regularly assigned and entitled to 48 hours advance notice of the date the force reduction was to become effective, under Rule 15 (a).

There have been prior awards of this Board which have dealt with the question of whether Truckmen, or hourly rated employes can hold regular assignments. In the Dissent to Award No. 2023, which held Truckmen held regular assignments, the following language was used: "It is apparent, of course, that the Opinion in this Award properly would apply to truckmen holding regular assignments, * * *" Also, see Award No. 1127 where it was held: "The claimants worked with substantial regularity and with substantially fixed starting times, and no adequate reason appears of record why they should be deprived of the eight-hour guarantee contained in the agreement." In that case, the Carrier maintained the claimants were excepted as doing fluctuating work that could not be handled by regular force. In Award No. 794, there was a dissent based principally on the money award, but not on the claim for violation of the Agreement which was very similar to the instant claim. There, in his response to the dissent, the Referee stated: "The case had its genesis in a disagreement between the parties as to whether hourly rated employes hold regularly assigned positions and are subject to Section C-(6)(a) with respect to the abolishment of their positions. The justification of Carrier's action in the premises depended entirely upon the determination of the question in its favor. It is the unanimous opinion of the Board that hourly rated employes do hold regularly assigned positions, and are subject to Section C-(6)(a) of the prevailing agreement." The Carrier violated this Agreement when it failed to give claimants 48 hours notice as required by Rule 15 (a), in advance of the effective date forces were to be reduced, and Claim 1 and 2 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 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 Carrier violated the Agreement.

AWARD

Claim sustained, except as to any employe who was away on vacation or absent of his own accord on July 15 and 16, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1950.