

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

1. The Carrier violated the effective Agreement when, on March 15, 1954, it furloughed Bridge and Building employes Kenneth J. Konkeli, Victor Siminic, Francis A. Pilon, Clarence DeMarse, Orville A. Olsen, Lester W. LaMarch, Glen M. Meyer, Isadore Casey, Anthony Vardian, Joseph Kutches, Peter Geb, Clarence Martin, Frank Smokovich, Donald W. Swanson, Robert A. Bosk Arnold Delvoux, Raymond J. Martineau, Arthur Sundquist, Stanley J. Kwarcianny and Frank Gersich in force reduction and retained employes in service who held no seniority rights under the provisions of this Agreement;

2. Each of the Claimants named in Part (1) of this claim be allowed the exact amount each lost because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants named in Part (1) of the Statement of Claim entered the Carrier's service in December of 1953 and January of 1954, thereby establishing a seniority date as B&B Mechanics and/or helpers as of the time their pay started as such and were assisting in the work of repairing the Carrier's ore docks at Escanaba, Michigan.

During the period December 1, 1953 to February 17, 1954, approximately 88 furloughed iron ore handlers, who held seniority under the provisions of the Carrier's Agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, were also employed to assist in the performance of the aforementioned work. By an expressed Agreement provision, such employes were precluded from establishing a seniority status under the Agreement between the instant parties by virtue of such employment.

On March 15, 1954, the claimants were furloughed in force reduction and the aforementioned iron ore handlers were retained in service.

dispute. These excepted items the carrier understands were fully within the knowledge of the employees during the handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This is the same docket in which by Award No. 9058 third party notice to the Brotherhood of Railway and Steamship Clerks was ordered. The required notice has now been given.

This claim relates to the same general circumstances as Award 9314 and claims the violation of Claimants' seniority rights by their furlough in force reduction on March 15, 1954 and the retention of employees without seniority rights under the Agreement.

In this Claim also the Carrier here raises the issue that the Claimants did not qualify for retention of seniority rights by filing their names and addresses with their immediate superiors within five days after their furlough, as required by Rule 11(b). The contention is that Claimants' seniority rights, if any, therefore terminated on March 20, 1954, leaving in any event only five days in question.

Our findings in Award 9314 are equally applicable here and necessitate the same result; in fact the record here is somewhat stronger. In that award we pointed out that Claimants alleged that the five day notice was given and that the issue concerning it had not been raised on the property; and that the Carrier did not deny those statements. We pointed out further that the record did not show that such an issue had been raised on the property, and that a letter of April 19, 1954, obviously the Carrier's first denial of the claim of April 15, 1954, gave entirely different reasons.

The record in this case includes in addition a letter of October 18, 1954, which apparently constituted the Carrier's final rejection of the Claim. It states as reasons for the denial the established practice of employing furloughed ore handlers, the incongruous results of the seniority rights claimed, and the Organization's alleged inconsistency in making claims for only twenty of forty-one employees allegedly concerned. But it does not mention any failure by Claimants to comply with Rule 11(b) nor seek to limit their claim to the first five days after their furlough. This final denial thus further confirms the Claimants' statements, not denied by the Carrier, that the notices required by Rule 11(b) were in fact given, and that no claim to the contrary was raised on the property. Thus the issue is not properly before us, and in any event cannot be sustained.

The incongruity of the results of this seniority provisions presumably brought about its elimination in the new Memorandum Agreement of August 1, 1954; but the rights here claimed had already accrued and were not thereby revoked. The claim must therefore be allowed.

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 has been violated.

AWARD

Claim sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of March, 1960.