Award No. 10006
Docket No. SG-9177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Railroad Signalmen of America on the Clinchfield Railroad that:

Each of the following employes be paid 8 hours at the straight time rate at their respective rates of pay for December 27, 28, 29 and 30, 1955, and holiday pay of not less than 8 hours each at straight time rate for Christmas Day, 1955, and New Year's Day 1956, while being required by the management to lay off their regularly assigned positions by letter of December 13, 1955, signed by Mr. M. L. Mannion, Engineer, Signals and Communications:

J. Adkins
J. I. Bradshaw
B. Edwards
T. Buchanan
T. H. Smith
C. E. King
J. L. Davis, Jr.
J. C. Christy, Jr.
J. B. Britt
W. R. McCall
R. W. Hatcher
W. H. Duncan

BROTHERHOOD'S STATEMENT OF FACTS: Under date of December 13, 1955, the claimants in this case were advised that they were to be laid off for the remainder of that year in a letter issued as follows:

"TO EMPLOYES CONCERNED:

Effective 4:15 P. M., December 23, 1955 the following men will be laid off for the remainder of this year:

J. Adkins
J. I. Bradshaw
B. Edwards
T. Buchanan
T. H. Smith
C. E. King
J. L. Davis, Jr.
J. C. Christy, Jr.
J. B. Britt
W. R. McCall
R. W. Hatcher
W. H. Duncan

Except to the extent it has limited itself by agreement, the Carrier is free to exercise its managerial prerogative to regulate the number of its employes in that interest.

We have shown that there is no such limitation placed upon the Carrier in the agreement with the Employes.

The pertinent rules of the agreement plainly state that forces may be reduced and that employes may be laid off. The rules plainly spell out the rights of employes when forces are reduced or employes are laid off. When the rules provide specifically the rights of employes when force reductions or layoffs occur it certainly cannot be said that force reductions or layoffs cannot be made.

The Carrier has shown that the action of which the Employes complain is fully supported by the agreement between the parties and that there is no rule to support the claim handled with the Carrier and now presented to this Board. Furthermore, the Carrier has shown that its action in reducing forces in December, 1955, was in keeping with its practice in the past—a practice not heretofore protested.

We submit, therefore, that the claim is wholly without merit and should, in all respects, be denied, and Carrier respectfully requests the Board to so hold.

All matters contained herein have been heretofore presented to the duly authorized representative of the Employes and have been made a part of negotiations on the property.

(Exhibits not reproduced)

OPINION OF BOARD: On December 13, 1955, Carrier advised certain employes, listed as claimants here, that such employes would be laid off work, effective December 23, 1955, for the remainder of the year 1955. Further that such employes would resume their present assignments 7:15 A. M., January 3, 1956.

The Organization contends that by such action of Carrier, the employes were deprived of work, by the arbitrary action of Carrier for the period from December 27, 28, 29 and 30 and, in addition, were deprived of work for the two holidays Christmas, 1955 and New Year's Day 1956. Claims are made for compensation at straight time rate of pay for all days listed, except for two holidays, for which compensation is claimed at the holiday rate of pay. For such alleged action on the part of Carrier, the Organization argues that Carrier has violated the provisions of Rules 14 (a), (b) and (d) of the Agreement between the parties, effective July 1, 1950 and also the provisions of Article II, Section 1 of the National Agreement of August 21, 1954.

Carrier contends that by its alleged action in bringing about a force reduction it has in no way violated any of the provisions of the referred to Agreements, but on the contrary such action is specifically provided for in Rules 34 and 39 of the Agreement between the parties.

A review of the entire record here, the rules of the effective Agreement as applied here by the parties brings us to the conclusion that the claims are not sufficient to warrant a sustaining award. Rule 14, as relied upon by the Organization, comes under the title of "Hours of Service, Overtime and Calls", and is a general rule providing for overtime and calls, and hours of service

relating to employes subject to the Agreement and does not contain any provision limiting Carrier's right to reduce forces. Rules 34 and 39 make specific provision covering Carrier's rights to reduce forces, such as the situation before us here. Rules 34 and 39 are special rules governing authority of Carrier in reducing forces. This Board in giving consideration to the matter here, must consider the provisions of all the rules of the Agreement as applicable to the claims before us. Neither Rules 34 or 39 are ambiguous in any respect, nor are in conflict in any manner with the provisions of Rule 14.

We are of the opinion that Carrier has not violated the provisions of Rule 14, in that Rules 34 and 39 authorize the action Carrier has taken, and such special rules take precedence over the provisions of Rule 14, a general rule. The Board is of the further opinion and such is borne out by the record here, that in 1953 Carrier took the same action in reducing forces. No protest was made nor were claims filed at that time against Carrier; we cannot say that such action is the usual custom and practice on this Carrier under the Agreement, the employes at least acquiesced in such action by Carrier.

The claims are not supported by the record before us in view of the provisions of Rules 34 and 39. Since the Claimants were not improperly deprived of work by Carrier, Article II, Section 1 of the National Agreement of August 21, 1954 has no application to the claim here.

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 did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of July 1961.

Dissent to Award 10006, Docket SG-9177

Among the errors contained in Award 10006 is one masterpiece, viz., the majority's application of the general vs. specific principle. For example, the majority says: