Award No. 13301
Docket No. MW-13106

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it furloughed Laborers Pete Tate, Jerry Clayton, Charles E. Todd, H. Corners, Don White, John Kendricks, E. Douglas, B. Jones, A. L. Wolfe and John Watts on September 13, 1960, without benefit of five days' advance notice.

(2) The Carrier now allow each claimant named in Part (1) of this claim five days' pay.

EMPLOYES' STATEMENT OF FACTS: The claimants were regularly assigned section and extra gang laborers.

On September 13, 1960, the claimants were furloughed from their respective positions on Section 136, Truck Gang 225 and/or Extra Gang 215. The date of notification was the same date furloughed.

Since no advance notice was given the claimants as provided for in the rules of the Agreement, claim was timely and properly presented and handled in all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 15, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 27 (b) of the effective Agreement reads:

> "Advance notice of not less than five (5) days will be given when forces are reduced or positions abolished. This rule will not apply to new employes brought into service in emergencies or seasonal extra gang laborers."

within the sixty (60) day period is absolute. It is not modified by any other provision of the agreement. It is not modified by a requirement for five (5) days' advance notice.

We repeat—had claimants been furloughed their seniority would have continued and the rules would have required that their names appear on the 1961 roster. Their names were omitted from the roster, without protest, which is evidence the organization recognized their services were terminated. They have not been re-employed.

It is Carrier's position that Rule 19(b) takes precedence over other rules of the agreement and that an employe may be removed from service during the sixty (60) day period without recourse to the disciplinary procedures or other rules limiting termination. Support for Carrier's position is found in Third Division Award No. 3152, MW vs. D&H, Referee Edward F. Carter. There, as here, the organization contended that other rules of the agreement took precedence over the special rule permitting termination of employment prior to approval of the application. There the organization attempted to invoke the contract provisions prohibiting dismissal prior to a hearing. It was decided in Award No. 3152 that the Carrier's right to terminate an employe's services prior to approval of the application took precedence over other provisions of the agreement. Following the same principle here it was clearly the Carrier's right to terminate the services of claimants without first placing them on furlough.

The facts of record are conclusive that the services of claimants were terminated as permitted by the rules. Accordingly, the five (5) days' notice provided for employes laid off in reduction of forces is not applicable and the claim is therefore without merit under the agreement rules here controlling.

(Exhibits not reproduced.)

OPINION OF BOARD: The petitioning Organization in this case submits a claim on behalf of certain section laborers because they were allegedly 'furloughed" without being given five days' advance notice as required by Rule 27 (b) of the Agreement. A letter has been introduced into evidence, addressed to the General Chairman from one of the Carrier's officials, in which reference is made to the fact that the Claimants had been notified that they were "laid off". It is the use of the words "laid off" which constitutes the crux of this case. The Petitioner argues that these words are synonymous with the word "furloughed", in consequence of which, Claimants should have been given the five days' advance notice.

The Carrier asserts that these laborers were hired temporarily to supplement the regular track forces for a special project. When their services were no longer required, they were notified that their employment was terminated. Since none of the Claimants had been so employed for a period of sixty days the Carrier contends that its right to terminate employment under such conditions is absolute, and that Rule 27(b) has no applicability. To support its position, the Carrier further argues that Claimants were terminated and not furloughed, and that the best evidence of this is that none of the Claimants were placed on the seniority roster. According to the seniority rules, if an employe is not separated or terminated from his employment within sixty days, he must be placed on the seniority roster, and as such all the rights and privileges contained in the basic contract, automatically accrue to him. Such was not the case here. Carrier relies on Rules 34 (a) Discipline and Grievances and Rule 19 (b) Seniority. The latter is by reference made a part of

the former rule, and a cursory reading of it supports the Carrier's position. It gives the Carrier without question authority to terminate an employe within sixty days.

The fact that these employes were not placed on the seniority roster plus the fact that no documentary evidence in the form of affidavits from the individual Claimants has been presented in support of their contention, leads us to believe that they themselves, under the facts surrounding their employment, knew that they were terminated and not furloughed. Absent the aforementioned affidavits or some other convincing evidence, we cannot say that the Petitioner in this case has presented any evidence which would enable us to sustain this claim. This case is purely one of semantics and as was stated in Carrier member's memorandum, according to Roget's International Thesaurus, Third Edition, the commonly accepted usage of the term "layoff" connotes disemployment, dismissed, discharge, whereas the word furlough connotes vacation, holidays, leave, leave of absence. For these reasons and because of failure to present the requisite body of evidence, we will deny the claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1965.